



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

July 12, 2006

MISSOURI CLEAN WATER COMMISSION MEETING

**Department of Natural Resources
East Elm Street Conference Center
1738 East Elm Street
Jefferson City, Missouri DNR**

July 12, 2006

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Ron Hardecke, Commissioner, Missouri Clean Water Commission
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission
Jan C. Tupper, Commissioner, Missouri Clean Water Commission

Edward Galbraith, Director of Staff, Missouri Clean Water Commission
Bill Byran, Counsel, Missouri Clean Water Commission
Malinda Overhoff, Secretary, Missouri Clean Water Commission

Mike Alesandrini, Department of Natural Resources, St. Louis, Missouri
Clifford Asberry, Doe Run, Viburnum, Missouri
Joe Boland, Department of Natural Resources, Jefferson City, Missouri
Todd Bozie, MSD, St. Louis, Missouri
Robert Brundage, Jefferson City, Missouri
John Bryan, Missouri Poultry Federation, Jefferson City, Missouri
Mark Buersmeyer, Department of Natural Resources, Jefferson City, Missouri
Don Collier, TRIAN, O'Fallon, Missouri
John W. Couch, Tyson Foods, Bentonville, AR
Chad Davis, Trenton Municipal Utilities, Trenton, Missouri
Cindy DiStefano, Missouri Department of Conservation, Columbia, Missouri
Buford Foster, Lake of the Ozarks, Camdenton, Missouri
Tim Ganz, Missouri American Water Company, Chesterfield, Missouri
Scott W. Gooden, Department of Natural Resources, Jefferson City, Missouri
Mubarek Hamed, Department of Natural Resources, Jefferson City, Missouri
Ted Heisel, Wash U. IEC, St. Louis, Missouri
Caleb Hunt, Tyson Foods, Sedalia, Missouri
Larry Johnson, Madison, Missouri
Velma Hazel Johnson, Madison, Missouri
Sarah Lacy, Forrester Group
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
Dick Lawler, Protect Mark Twain Lake Assoc., Monroe City, Missouri

Douglas Lee, TRIAD Development, Foley, Missouri
Katie Levin, Environmental Clinic at WU, St. Louis, Missouri
David Madden, Wash U IEC, St. Louis, Missouri
Steve Mahfood, The Nature Conservancy, Hartsburg, Missouri
Jimmy Mardis, Tyson Foods, Springfield AR
Joe Maxell, Protect Mark Twain Lake Assoc., Mexico, Missouri
Sarah McMichael, Department of Natural Resources, Jefferson City, Missouri
Linda Mebruer, Department of Natural Resources, Jefferson City, Missouri
Refaat Mefrakis, Department of Natural Resources, Jefferson City, Missouri
Marty Miller, Newman, Conley & Ruth, Jefferson City, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Paul Mueller, Department of Natural Resources, Troy, Missouri
Susan Myers, MSD, St. Louis, Missouri
Doug Novinger, Missouri Department of Conservation, Columbia, Missouri
Steven Patterson, Doe Run Company, Salem, Missouri
Kevin Perry, Forrester Group, Jefferson City, Missouri
Jerry J. Presley, Missouri Forest Products Assoc., Centertown, Missouri
Peter Price, Department of Natural Resources, Rolla, Missouri
Ted Salveter, City Utilities, Springfield, Missouri
Candy Schilling, ERC, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Daniel Schuette, Department of Natural Resources, Jefferson City, Missouri
Jon Stetzel, TRIAD Development, O'Fallon, Missouri
Karl Tyminski, MSD, St. Louis, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Mary West, Mo Public Utility Alliance, Columbia, Missouri
Ray West, Hood-Rich, Inc., Springfield, Missouri
Bob Williamson, KCMO Water Services, Kansas City, Missouri
Christine Woltman, Tyson Foods, Inc., Cheronee, Iowa
Betty Wyse, ERC, Jefferson City, Missouri

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1 BEFORE THE DEPARTMENT OF NATURAL RESOURCES

2 STATE OF MISSOURI

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4 In the Matter of: Draft Rulemaking Public Hearing

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7 HEARING

8 MISSOURI CLEAN WATER COMMISSION

9 Elm Street Conference Center

10 1738 Elm Street

11 Jefferson City, Missouri

12 July 12, 2006

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14 BEFORE: Chairman Herrmann

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 COMMISSIONERS: Cossette Kelly

16 William Easley

 Kristin Perry

17 Ron Hardecke

18 Jan Tupper

19 CERTIFIED COURT REPORTER:

20 LISA M. BANKS, CCR NO. 1081

21 MIDWEST LITIGATION SERVICES

22 11 North Fifth Street

23 Columbia, Missouri 65201

24 573-442-3600

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1 (Hearing start time: 9:15 a.m.)

2 CHAIRMAN HERRMANN: The **first item** on the
3 agenda is a **public hearing on the Administrative**
4 **Hearing Commission Rule**. The Commission will begin the
5 public hearing on 10 CSR 20-1.020 of the Administrative
6 Hearing Commission procedures. The purpose of this
7 public hearing to provide the Department with the
8 opportunity to present testimony and to provide both
9 the Department and the public the opportunity to
10 comment on the rule.

11 This public hearing is not a forum for
12 debate or resolution of issues. The Commission asks
13 that those commenting limit their testimony to five
14 minutes and not repeat comments that others have
15 already made.

16 The Commission will first hear testimony
17 from the Department. Following the Department's testimony,
18 the Commission will give the public the opportunity to
19 comment. We ask that all individuals fill out --
20 present, fill out an attendance card so our records are
21 complete. If you wish to present verbal testimony
22 please indicate that on your attendance card.

23 When you come forward to present
24 testimony, please speak into the microphone and begin by
25 identifying yourself for the court reporter. Following
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1 the public hearings today the Commission will review
2 testimony and make appropriate modifications of the
3 proposal. The Commission plans to take final action at

4 the September 6, 2006 meeting.

5 The court reporter will now swear in
6 anyone wishing to testify at this public hearing before
7 the Clean Water Commission today. All those wishing to
8 comment, please stand.

9 (Witnesses sworn.)

10 CHAIRMAN HERRMANN: We'll first hear
11 testimony from the staff, Mr. Ed Galbraith.

12 ED GALBRAITH testifies as follows:

13 MR. GALBRAITH: Thank you, Mr. Chairman
14 and members of the Commission. At its January
15 commission meeting the Clean Water Commission heard
16 testimony from the Water Protection staff presenting the
17 agenda -- rule making agenda -- that included proposed
18 changes to 10 CSR 20-1.020, appeals and requests.

19 This draft language was drafted by the
20 Commissioner's Core work group, which was a work group
21 of commissioners from the various DNR commissions. It
22 was chaired by Norella Huggins of the Hazardous Waste
23 Management Commission. And they prepared some draft
24 language for all commissions to consider in how to
25 implement appeals and other matters that go to the

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1 Administrative Hearing Commission and then come to
2 respective commissions for their final vote and decision.

3 Based on your approval, the Water
4 Protection Program filed this proposed rule with the
5 Secretary of State's office and was published in the
6 Missouri Register on June 1st, 2006. And the draft is

7 provided with the package.

8 Today's hearing is to provide an
9 opportunity for commenters to speak directly to you,
10 the commissioners, regarding the proposed rule. In
11 addition to the testimony that we collect today, the
12 Department will also accept written comments until
13 5:00 p.m. July 19th, 2006. The Water Protection
14 Program will prepare a written summary in response to
15 all written and oral comments and present this, the
16 final recommendation, for the rule to the Commission at
17 its September 6th, 2006 meeting for your consideration.
18 I'll be happy to answer questions if I can.

19 CHAIRMAN HERRMANN: Are there no
20 questions? Thank you Mr. Galbraith. We have a card
21 from Robert Brundage, a request to address the
22 Commission.

23 ROBERT BRUNDAGE testifies as follows:

24 MR. BRUNDAGE: Good morning Mr. Chairman
25 and members of the Commission. As you know, last year

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1 the general assembly passed a statute transferring
2 appeals to the Administrative Hearing Commission. When
3 I say transfer, the extent of the jurisdictional
4 transfer is -- well, it was not complete. The Clean
5 Water Commission retains jurisdiction to -- to render
6 final decisions.

7 One thing about this rule that was
8 proposed here is rather short and I don't think it
9 encompasses everything that needs to be discussed.

10 It's been my experience over the last year that the
11 Administrative Hearing Commission has their own set of
12 procedural rules that were tailor-made for other types
13 of cases. They're basically -- don't, in my opinion,
14 don't fit well with the types of appeals that come from
15 the environmental cases. So therefore, I think this
16 rule that's proposed today needs to be -- needs to
17 include some other things. Let me discuss several of
18 those.

19 First of all, I want to point out that
20 one thing the rule does not do, which I think confuses
21 the matter, is that still present in the regulations in
22 a different regulation, the 6.020 regulation, which is
23 proposed -- which there are no changes proposed to
24 that -- includes a lot of provisions on how appeals are
25 filed. So I personally don't understand why that

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1 portion of rule was not combined with the proposed --
2 what's proposed here in 1.020.

3 Is that -- my understanding this 1.020 is
4 a brand new regulation, so I don't understand why they
5 weren't put together. And I recommend they would be
6 put together.

7 As you know, through the years there's
8 been debate on third-party appeals and who has
9 standing. And there was a case that went all the way
10 to the Supreme Court that said that third parties do
11 have standing. But of all the third parties in the
12 State of the Missouri, who would have standing to

13 appeal a certain case? Certainly not everybody in the
14 State of Missouri would have standing. They would have
15 adversely effected.

16 I would recommend the Clean Water
17 Commission try to lay out some perimeters and some
18 guidance for the Administrative Hearing Commission and
19 yourself and for everybody who would consider filing an
20 appeal, you know, who is adversely effected. Right now
21 we see -- you don't see these, but I see other cases
22 that are filed that don't necessarily get to you, or
23 haven't got to you yet -- where you have a wide variety
24 of third parties filing appeals.

25 And I was suffice it to say that a lot of
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1 those people are not adversely effected to the extent
2 that they should be granted standing. So I would
3 recommend the Clean Water Commission review that matter
4 and come up with some perimeters where we will know who
5 has standing and you'll get better direction from the
6 Administrative Hearing Commission.

7 It's been also my experience in the last
8 six months with the appeals for the Administrative
9 Hearing Commission that they basically do not impose
10 any requirements on how an appeal must be addressed.
11 At least in the Clean Water Commission regulations --
12 and this is the regulation that you're not changing, or
13 not proposing any changes to -- the 6.020. It says in
14 there that, you know, you're supposed to put the quote
15 of reasons why the appellant believes the actions of

16 the Department or Commission should be reversed on
17 modified. Right now, the Administrative Hearing
18 Commission is not even requiring that level, at least
19 in my opinion.

20 For example, if you -- if you request a
21 Petitioner to go through their appeal and be more
22 specific, it's then a challenge to get that done. I
23 would like to see this area maybe be made more strong
24 in the Clean Water regulations, where anybody who feels
25 the permit has to be fairly articulate on what they're

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1 appealing.

2 Let me give you another example of what I
3 would like to see, that is not including in these.
4 There's a statute that was enacted six years ago and it
5 says its burden of proof is on the Department of
6 Natural Resources. Well, in hearings before the
7 Administrative Hearing Commission, I believe it's going
8 to be the AHC's practice to require the -- the person
9 filing, excuse me -- is going to require the Department
10 of Natural Resources to go first and present their
11 evidence.

12 I'd like to see a regulation where it
13 says whoever is filing the appeal must go first and
14 present their evidence and then the Department go
15 second. Typically, I think the reason the AHC is doing
16 this is cause they're first saying that the Department
17 of Natural Resources has the burden of proof, so they
18 can go first. Now, in my opinion, that's kind of

19 counter-intuitive in the way things have always been
20 done, is that if you were a Petitioner or Appellant has
21 a problem with a permit, get up and tell us what that
22 is; present your evidence. And I would think that, you
23 know, that the burden is still on the Department and
24 any showing by an appellant will transfer that burden
25 of proof to the Department. So that's something I

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1 think should be addressed in a procedural rule.

2 Another matter is answers; the
3 Administrative Hearing Commission has a rule that says
4 that the Department of Natural Resources must file an
5 answer to every appeal. In the past that's never been
6 done. I don't necessarily have a problem with that,
7 but I know the Attorney General's Office has struggled
8 on what to put in an answer, especially when you're
9 dealing with appeals that are not written very well and
10 you don't know exactly what they're appealing. So you
11 don't know exactly what to put in your answer. And
12 that's been a challenge. And I think that the rule
13 ought to say at least that the only thing you have to
14 do is answer the specific allegation in the appeal.

15 If you don't mind, I'm gonna sit down
16 because I'm a little bit under the weather today.
17 Okay? And I'll continue my testimony.

18 (WHEREIN; a short recess was taken.)

19 MR. BRUNDAGE: I'm trying to recall the
20 last point I was trying to make. I think it was on
21 answers. Anyway, I think some procedural regulation

22 needs to be enacted that clarifies how the Department
23 should answer an appeal, and clarify that they only
24 have to file answers which were specifically appealed.

25 There has been some confusion about that in the last

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1 number of months -- on maybe trying to be safe and
2 sorry and file an answer that is that maybe broader
3 than is actually required, or should be necessary under
4 the circumstances.

5 The last thing at least I wanted to make
6 you aware of is that the Administrative Hearing
7 Commission has decided that they do not have statutory
8 authority to render motions for summary judgements.
9 They call them motions for summary determination, but
10 it's the same thing as a summary judgement in a Circuit
11 Court.

12 Of course the Clean Water Commission
13 can't do anything about that, you know, in regulation.
14 But I do want to make aware that there's probably, and
15 there is a need in my opinion, and I think every other
16 environmental attorney I've discussed this with,
17 including the Missouri Bar Association's Environmental
18 and Energy Law Committee. They all concur -- they all
19 concur that there should be a statutory change to allow
20 the Administrative Hearing Commission, and specifically
21 every environmental commission who's rendering these
22 final decisions, to be able to rule on a motion for
23 summary judgement or for that matter, a motion to
24 dismiss.

25 Right now there's some language in the
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1 statutes that says you know, basically, you know, there
2 shall be a hearing. Well, does that mean you have to
3 have a hearing no matter what, even if nobody disagrees
4 on what the facts are? There's no necessity -- the
5 hearing is not necessary because you could stipulate to
6 the facts?

7 Right now it looks like the
8 Administrative Hearing Commission is going to require a
9 hearing, even if all you do is get up and maybe
10 introduce and stipulate the facts, but nonetheless you
11 have a hearing. And that's certainly an extra burden
12 on the attorneys and parties to prepare for a hearing
13 when one is not necessary.

14 I can tell you that the Missouri Bar's
15 Energy and Environmental Law Committee is working on that
16 and is going to prepare some language for a bill this
17 next session. And if the Clean Water Commission could
18 indorse something like that, I would certainly welcome
19 it.

20 Just to summarize my testimony, I
21 believe that this rule that is proposed today, is not
22 sufficient. I do appreciate one thing in the rule that
23 was not in there before. It talks about how the
24 decisions were made and the proposed decisions are
25 shared with counsel, or shared with all parties. And

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1 they would then have an opportunity to review that.

2 And if they wanted, rebut it in closing arguments
3 before the Environmental Commission. So that is
4 something that is good about this rule. But as a
5 whole, I think the provisions in 6.020 and this new
6 rule need to be combined and expanded. And that's,
7 that's -- that's probably too big of a job to do for
8 the Commission in this next several weeks in the
9 Department.

10 So I would recommend that the Department
11 of Natural Resources and Clean Water Commission not
12 enact this rule, but go back and try to put them
13 together and adopt some of the recommendations and come
14 back with a new product in the future. Thank you.
15 That concludes my testimony.

16 CHAIRMAN HERRMANN: Robert, the appeal
17 is made to the Commission and referred to the Clean
18 Water Commission. That is, as referred by the Clean
19 Water Commission to the Administrative Hearing
20 Commission. They are performing the legal requirements
21 for the hearing. Although you say they don't have the
22 power to say that Administrative in other words, to
23 dismiss it, as not sufficient. That can be a
24 recommendation to the Commission. Correct? Since the
25 Commission is making their final determination, the

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1 final assessment?

2 MR. BRUNDAGE: You mean the Commission
3 is not constrained by the AHC own statutes and rules.
4 Is that what you're saying?

5 CHAIRMAN HERRMANN: No. No. If they
6 want to dismiss the suit, that be after their hearing
7 or whatever.

8 MR. BRUNDAGE: Oh --

9 CHAIRMAN HERRMANN: Whatever it is.

10 MR. BRUNDAGE: That --

11 CHAIRMAN HERRMANN: They can suggest
12 that or refer that to the Clean Water Commission and we
13 then can dismiss it as insufficient in fact or in body.

14 MR. BRUNDAGE: That's correct. But
15 still the AHC would still have to have a hearing.

16 CHAIRMAN HERRMANN: Yes.

17 MR. BRUNDAGE: To collect the evidence.
18 They could --

19 CHAIRMAN HERRMANN: Which --

20 MR. BRUNDAGE: -- then --

21 CHAIRMAN HERRMANN: Which --

22 MR. BRUNDAGE: Then they could recommend
23 a dismissal.

24 CHAIRMAN HERRMANN: Which might be the
25 submittal of letters or whatever it need be. Correct?

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1 Correct? I mean --

2 MR. BRUNDAGE: Well, somebody would have
3 to testify at a hearing, I would think. Or maybe the
4 attorneys could, or I could. Bill Bryan could also
5 chime in. If all parties agree, maybe they could just
6 have a hearing and stand up and say, "Here are the
7 stimulated facts. This is exhibit one. We'd like to

8 introduce this in evidence." And they would really
9 accept that into evidence and then the hearing would be
10 over. And then they could rule -- apply the law to
11 those facts. That's a possibility.

12 But Chairman Herrmann, one other thing I
13 wanted to say about this is the statute I think, makes
14 use of the word transfer, transfers these appeals to
15 the Administrative Hearing Commission. In my mind, I
16 don't have any answer to this question, but if the
17 Clean Water Commission were to adopt a set of detailed
18 procedural rules -- this is a rhetorical question -- is
19 the Administrative Hearing Commission bound by those
20 because they are basically a glorified hearing officer?
21 Or does the word transfer in the statute means that
22 they have complete authority over this and if they so
23 chose, that they would have to adopt their own
24 procedural regulations for these type of environmental
25 cases.

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1 CHAIRMAN HERRMANN: That's what brought
2 this up in the first place. If you recall in the past,
3 the Administrative Hearing Commissioner did not have
4 enough personnel to handle the appeals. We were doing
5 it through contract attorneys. And that left open the
6 question, if these people were following details of
7 procedural rules or if they were, so to speak, doing
8 their own thing.

9 And in order to avoid any question of
10 illegality or improper conduct, the piece of

11 legislation was finally enacted. That said Clean Water
12 Commission would refer, or in your words, transfer
13 these appeals to the Administrative Hearing Commission
14 so they would be conducted in accordance with
15 recognized procedures. And I think that's the gist
16 with this whole thing.

17 The only thing in which I -- question
18 when I went through my review of this was you question
19 any person adversely effected. Now, since we don't
20 have a definition of that any place in this rule, or
21 any place else that I'm aware of, about a person who is
22 adversely effected, that leaves a very, very wide range
23 of -- big wide door open. And that's been a heartburn for the
24 Commission in the past. I think that these should be
25 straightened. But anyway, if --

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1 MR. BRUNDAGE: I agree on that.

2 CHAIRMAN HERRMANN: I'll ask Mr. Bryan.
3 If the proper procedural effort might be to approve
4 this rule today but instruct the staff through
5 Mr. Bryan to conduct a future review for clarification,
6 or adoption of rules for the Commission that you
7 suggest to clarify or improve this rule.

8 MR. BRYAN: I can prepare some
9 suggestions on that. The public comment period runs
10 until July 19th of 2006 at 5:00 p.m. So anyone in the
11 public can submit their comments up to that time, so
12 the Commission couldn't approve the rule today.

13 I will -- to clarify the way the appeals

14 go under the new statute is that they are filed with
15 the Administrative Hearing Commission instead of this
16 commission. So we're not transferring them over them
17 anymore. They're handling that from the start. And
18 they will prepare their recommended decision and send
19 it to you for your review, modification, or approval.

20 The issue that may have caused some
21 confusion, that Mr. Brundage was speaking about, has to
22 do with when the two parties don't necessarily agree
23 that the case can be disposed of without an evidentiary
24 hearing or without calling witnesses and
25 cross-examining witnesses and presenting exhibits. In
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1 many cases, as Mr. Brundage has explained, the parties
2 will agree on what the facts are and can have a
3 stipulation of what those facts are. The Court can
4 then decide the case more economically, more
5 sufficiently without calling witnesses and having a
6 court reporter and so forth.

7 But there is a category of cases of
8 which parties don't agree on what facts are. But
9 nonetheless, one of the parties may feel they're
10 entitled to judgement as a matter of law based on what
11 their view of the facts are that are material. And
12 they would want to file a motion to get the Commission
13 rule on that.

14 And right now the Administrative Hearing
15 Commission is taking the position that they don't have
16 the authority to do that under the Clean Water law. So

17 I think that's what the difference is. It's simply in
18 a case where there's a dispute about the facts, but one
19 of the parties believes that there's no need to have a
20 hearing and the other party thinks that there is. I
21 think that that -- most of the lawyers that I know in
22 our office and other private parties think that would
23 be common sense improvement to the Clean Water law;
24 would be to allow for the disposition of cases on
25 summary judgement.

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1 But that is something that would require
2 legislative change and I don't think we could take care
3 of here. But if the Commission does want me to review
4 the rule, and make some recommendations based on
5 Mr. Brundage's comments, I would be happy to do that
6 before the 19th.

7 COMMISSIONER PERRY: I would like that. I would
8 like to -- what is a statutory status of third-party
9 appeals? Because this clearly seems to be allowing
10 those.

11 MR. BRYAN: There has -- I don't believe
12 there's been any statutory change, to my recollection,
13 since the Supreme Court ruled on that bill. I don't
14 recall any change. So the statutory status would be as
15 described by the Supreme Court opinion in the Fort
16 Leonard Wood cases that allows third-party appeal.

17 COMMISSIONER. PERRY: And is there any guidelines
18 in that as to what adversely effected means?

19 MR. BRYAN: There are a number of Court

20 of Appeals and Supreme Court opinions that discuss
21 adversely effected, grieved, various terms that appear,
22 in other statutes. Off the top of my head, I don't
23 know how much guidance there is. I don't recall how
24 much guidance is provided in that Supreme Court
25 opinion. But there is case law that interprets what
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1 these various terms mean in an administrative
2 procedure.

3 CHAIRMAN HERRMANN: The Fort Leonard Wood
4 case came out of the Western District --

5 MR. BRYAN: That one came out of the
6 east.

7 CHAIRMAN HERRMANN: Eastern --

8 MR. BRYAN: The is PSF out of the west.

9 CHAIRMAN HERRMANN: Okay.

10 MR. BRYAN: So --

11 CHAIRMAN HERRMANN: -- now that was
12 contradictory to the western -- to the --

13 MR. BRYAN: Yes. That's correct.

14 CHAIRMAN HERRMANN: So we have a
15 decision on both sides of the argument. Correct?

16 MR. BRYAN: And then the Supreme Court
17 settled the matter in favor of third-party appeals.

18 CHAIRMAN HERRMANN: They did.

19 MR. BRYAN: At one point we had opposing
20 opinions that were not necessarily capable of being
21 reconciled. And now we have the Supreme Court case
22 ruled on one of those cases and that is the law.

23 CHAIRMAN HERRMANN: In Missouri Supreme
24 Court?

25 MR. BRYAN: Yes.

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1 CHAIRMAN HERRMANN: Okay.

2 MR. BRUNDAGE: Mr. Chairman, after the
3 PSF decision, the General Assembly changed the statute
4 in the Missouri Clean Water law. That's one thing that
5 the old PSF case was the discussion of who was the
6 executive secretary, if I recall correctly. And I
7 guess -- I think they came up with the fact that the
8 DNR director and the executive secretary weren't the
9 same person. That's what the court appeals said.

10 The statute cleaned that up and make it
11 clear that -- I can't remember what they called it, but
12 they -- the statute cleared it up where it made clear
13 that the executive secretary was the same thing as the
14 DNR Director.

15 So that statutory change coupled with
16 the Fort Leonard Wood case has cleared that up where the
17 third parties do have standing. But, Bill can correct
18 me if I'm wrong, but I think that that Fort Leonard Wood
19 case did not go into a definition of who is adversely
20 effected; just the fact that third parties are allowed
21 to file appeal. Is that an accurate summary Bill?

22 MR. BRYAN: I believe it is. I don't
23 recall all the details on that case today.

24 COMMISSIONER PERRY: I would like a memo that you
25 prepared for us to include some opinion as to some

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1 guidance for this rule or suggestions of how to make
2 affected parties clearer for people who may be
3 contemplating bringing an appeal, to know whether or
4 not they would have a standing.

5 MR. BRYAN: I'll prepare such a memo.

6 CHAIRMAN HERRMANN: Any other comments
7 on this topic?

8 COMMISSIONER COSETTE: Yes. I would like to say
9 that I agree that we need to get some kind of
10 definition of who is adversely effected. But I am
11 concerned that that would limit that so far -- there
12 are all kinds of complex reasons how people can be
13 adversely effected. And I wouldn't like to see that so
14 restricted that people could not get access.

15 CHAIRMAN HERRMANN: Okay. All the
16 comments? The Commission will receive written
17 testimony on this proposal until 5:00 p.m. on
18 July 19th, 2006. They may submit this written
19 testimony to Malinda Overhoff, secretary to the Clean
20 Water Commission, to P.O. Box 176 Jefferson City,
21 Missouri 65102 prior to that deadline.

22 On behalf of the Commission, I thank
23 everyone who has participated in this process. The
24 hearing is now closed. Thank you.

25 (Hearing adjourned.)

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2 CERTIFICATE OF REPORTER

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I, LISA M. BANKS, a Certified Court Reporter, within
and for the State of Missouri, do hereby certify that the
witness whose testimony appears in the foregoing deposition
was duly sworn by me; that the testimony of said witness was
taken by me to the best of my ability and thereafter reduced
to typewriting under my direction; that I am neither counsel
for, related to, nor employed by any of the parties to the
action in which this deposition was taken, and further, that
I am not a relative or employee of any attorney or counsel
employed by the parties thereto, nor financially or
otherwise interested in the outcome of the action.

Lisa M.Banks, CCR

1 BEFORE THE CLEAN WATER COMMISSION

2 STATE OF MISSOURI

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9 MEETING OF:

10 July 12,

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15 CONDUCTED BY:
16 CHAIRMAN THOMAS A. HERRMANN

17 Clean Water Commission
18 Department of Natural Resources
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24 TRANSCRIBED FROM AUDIO TAPES BY:

25 DANIELLE Y. MOSER

1 CHAIRMAN HERRMANN: **Item #2** in the agenda booklet is the approval of the
2 **June 7th, 2006 Clean Water Commission meeting and minutes.** If there are no
3 clarifications, comments, additions. The chair would entertain a motion to
4 accept the minutes and enter them into the record.

5 COMMISSIONER PERRY: I'll move that we approve the minutes.

6 COMMISSIONER KELLY: Second the motion.

7 CHAIRMAN HERRMANN: Moved and seconded any discussion. Hearing none the
8 minutes are accepted and will be entered into the record.

9 CHAIRMAN HERRMANN: **Item #3** in the agenda booklet **dismissal of Kansas City,**
10 **Fishing River Wastewater Treatment Plant, 06-050 Clean Water Commission**
11 **Appeal.** Bill Bryan, Attorney General's office.

12 MR. BRYAN: Chairman Herrmann we got items three, four, five, and
13 six are all dismissals of permit appeals that could be taken up together and
14 if the commission wants to look at those items and see if they have any
15 questions or if there is anyone here that wants to discuss any of those items
16 you can dismiss by law with one vote.

17 CHAIRMAN HERRMANN: I have a few clarifying questions.

18 MR. BRYAN: Very well.

19 CHAIRMAN HERRMANN: Mr. Bryan why don't take them individually but vote
20 on them as a group.

21 MR. BRYAN: That's fine.
22 on the number three the Fishing River appeal there
23 was a negotiations between the city and the department and they reached an
24 agreement on the appeal and a new permit was issued on April 21, 2006 so
25 the recommended decision to dismiss the appeals and what the commission ought

1 to do and we've got a document together for that. On number four the Todd
2 Creek appeal a similar situation with the City of Kansas City through
3 negotiations the ammonia and nitrogen limits have been adjusted using the new
4 water quality standards and there was also a -- a compromise on the monitoring
5 frequency and that permit was also issued on April 21, 2006 so the correct
6 decision there would be to dismiss that appeal at this point as well. On number
7 five the Boone County Regional Sewer District, El Chaparral Lagoon appeal the
8 issue was de-chlorination there was a permit limit for total residual chlorine
9 and a scheduled compliance so the issue was whether or not this appeal was
10 timely or whether it was premature and the Administrative Hearing Commission
11 found that because no permit had yet been issued that there was nothing to
12 appeal in that one. So there's -- there's simply no appeal we just need to
13 adopt that recommended decision, from the Administrative Hearing
14 Commission. And the Boone County Regional Sewer District, Lake of the Woods
15 appeal the issue was again - well it was a little different issue. It was
16 the ammonia nitrogen and the petitioner's wanted to schedule compliance so
17 that they could have time to get into compliance with the new limit, there
18 were negotiations that resulted in a modified permit being issued on May 5,
19 2006. So I think that appeal is essentially now moot so it should be
20 dismissed. Those are the appeals that are ready for dismissal if you have
21 questions about any of them.

22 CHAIRMAN HERRMANN: One question I have in common to all four is what is the
23 receiving stream in which discharge is made.

24 MR. BRYAN: I do not know that.

25 CHAIRMAN HERRMANN: I know that the staff would of Fishing Rivers what stream.

1 CHAIRMAN HERRMANN: Fishing River, that's obvious.

2 MR. BRYAN: Yet, that is a

3 CHAIRMAN HERRMANN: Todd Creek is obviously Todd Creek is that correct?
4 Boone County Regional Sewer District is to what
5 stream? What's the receiving stream?

6 MR. GALBRAITH: Tributary to the Gans I believe.

7 CHAIRMAN HERRMANN: And Lake of the Woods?

8 MR. GALBRAITH: I don't know does anybody know or the staff?

9 I don't believe we know the answer to that one.

10 CHAIRMAN HERRMANN: Okay. I think it would be beneficial for the
11 commission to know the parameter on Fishing River the resulting modified --
12 resulting modified permit was issued on April 21st. I would like to know what
13 was the original a parameter and what were they agreed to eventual parameter.

14 MR. GALBRAITH: Fishing River of Todd Creek.

15 CHAIRMAN HERRMANN: Both.

16 MR. BRYAN: I am sure we can get -- get that information together
17 I don't have it in our office. I assume that the lawyer in our office who
18 handled the appeal would be able to get that together if you wanted on the
19 the Fishing River and Todd Creek appeals to table them to our next meeting we
20 can get that information together and get it to you, it's not time sensitive
21 that you do this today.

22 CHAIRMAN HERRMANN: Okay. The Boone County Regional, El Chaparral says a
23 schedule compliance that required connection to the City of Columbia's waste
24 water collection system. What is the agreed to timetable for connection?

25 MR. BRYAN: I am not sure that the permit has been issued, so I

1 don't if that's -- if we've got to that point yet on that. On that particular
2 appeal.

3 CHAIRMANN HERRMANN: Well, we approved things in the past, which had a
4 open ended requirement with no time table.

5 MR. BRYAN: Mm, huh.

6 CHAIRMAN HERRMANN: And they have been a sore spot to the commission for
7 months and months and sometimes years after the original contemplation.

8 MR. GALBRAITH: I am pretty sure this is not an open ended. The
9 Boone County has a time table of and I want to say it's a couple of years but
10 there is already part of their overall master plan to get some of these smaller
11 systems hooked up and regionalized so this does not fall under that category
12 but we'll find out for you what the - what the precise schedule compliance is.

13 CHAIRMAN HERRMANN: Same thing with Lake of the Woods says a scheduled of
14 compliance and I think the commission would like to see the schedule
15 promulgated or proposed.

16 MR. GALBRAITH: You got it.

17 MR. BRYAN: Okay. That -- that unless there's a motion from the
18 commission to do something different that would wrap up those matters for
19 today and we will just bring them back -- bring them back in September.

20 CHAIRMAN HERRMANN: Okay, any discussion on that?

21 MR. GALBRAITH: Let me ask -- may I ask what staff does that.

22 I don't know if these communities are all represented
23 by the Sewer District for all represented do you know if that would present
24 any difficulties procedurally for either Kansas City or Boone County. I am
25 looking principally at Refaat or perhaps Phil. Is there anything that comes to

1 mind that the commission should be aware of?

2 (Speaking in background that is inaudible)

3 MR. GALBRAITH: Okay. All right, thanks.

4 There's somebody from Kansas City that wants to be
5 heard.

6 CHAIRMANN HERRMANN: Yes, sir.

7 MR. BOB WILLIAMSON: I am Bob Williamson from Kansas City (inaudible).

8 MR. GALBRAITH: Thank you.

9 CHAIRMANN HERRMANN: That was on Todd Creek and Fishing River. Okay,
10 thank you.

11 CHAIRMANN HERRMANN: Well, I guess I do have a difficulty with El
12 Chaparral. You say they required connection study would take out two to
13 three years. That means that the contested total residual chlorine in a
14 discharge to the stream would continue for two to three years. I don't think
15 that is reasonable and acceptable timetable at least in my mind. I think I
16 would like to hear a more definite decision in how long should the commission
17 be expected to look for this apparent violation of water quality standards.

18 Unidentified Speaker:(Inaudible).

19 CHAIRMAN HERRMANN: Okay. Now, move to **tab seven Lagoon Renewal**
20 **Procedures** by Refaat Mefrakis.

21 MR. MEFRAKIS: Good morning Mr. Chairman and members of the commission.
22 My name is Refaat Mefrakis I was the chairman for the lagoon work group
23 and I would really like to acknowledge the work group of stakeholders'
24 effort and water protection program staff on the development of this policy.
25 I feel this is a very significant milestone progress that we've made for the

1 lagoon renewals as far as improving the environment and getting some of the
2 renewals done, what was driving this -- the lagoon policy? Is the department
3 for many months or years maybe even before my time during the water protection
4 program a year and half that we at the department have been getting a lot of
5 comments subjective to lagoon renewals in issuing new lagoon permits with
6 lagoon limits without conducting a water quality study. The lagoon limits are
7 what we consider to be the equivalent to secondary treatment are -- are much
8 higher than secondary treatment lagoon, which is secondary treatment limits
9 which is 30/30. And the department didn't have sufficient data to determine
10 which lagoons are causing the problem. It was necessary for us to menu those
11 permits basically the renewals put on hold, to figure a way of how we can proceed
12 with a renewal and why does these comments. What we are trying to do with this
13 lagoon policy is to fulfill the after-the-fact requirements of Section 8 of
14 Chapter 7 and at the same time recognize that lagoon is a valuable treatment
15 technology if properly designed, operated, and maintained. What Section
16 8 says that or requires the water quality impact study must be conducted before
17 the technology based effluent limits for lagoons and trickling filter can be
18 applied that's the -- now the water quality impact study is not defined in
19 our regulations so in effect this lagoon policy defines what water quality study
20 is for this purpose of renewal. And, we all know that lagoon can have potential
21 cause to water quality and so we are trying to balance those issues here. When
22 this was brought up to our attention and we were trying to figure what can be
23 done we probably have three options and three things that has been proposed.
24 First one was let's go ahead and have permit writers go out in the field do a
25 site survey, stream survey, and determine whether the streams are impacted

1 before renewing the permits. That option turned out to be very -- very
2 challenging and has some concerns raised are far as consistency, work load,
3 training, and so many permit writers who do site surveys -- stream surveys so at
4 that time we created a stakeholder work group and the first initial proposal
5 that we proposed to the work group. Item #2 is what if we include in stream
6 monitoring as we renew these permits. We have received opposition from all
7 parties there was a no, no, and there were a lot of concerns for the quality of
8 the data to be collected by the lagoon operators. What are we going to go with
9. this data, and how can it be analyzed. So there was a lot of issues with that.

(End of Tape 1 Side A)

10 We felt that we are ready to conduct. The central office conducts low flow
11 stream surveys. When we look at the process and enhance the process and focus a
12 little bit more on the lagoons as we conduct those stream studies we've found
13 out we are able maybe to do up to fifty a year this may require us to hire
14 additional contractors to do more stream surveys. At the same time the lagoon
15 operators are already operating under their existing expired permits with the
16 same limits let's go ahead and renew those permits we follow up with a
17 commitment to conduct additional stream surveys. So the final policy basically
18 says we would renew all the permits that -- that we have no knowing water
19 quality impacts, and we would check out data to make sure that there's no TMDL
20 issues, no impairment, no known water quality impacts then we will go ahead and
21 renew that. That the permits are not being violated; the limits are not being
22 violated as a basis for renewal. In addition the department will conduct those
23 low flow stream surveys and as I mentioned we would probably ended up doing
24 50-60, and may hire additional contractors to help us do those stream surveys.
25 Now in the event that we find that the permit is causing non-attainment for any

1 use we would go ahead open the permit. We would include a schedule of
2 compliance, possible upgrade. Maybe the lagoon is not maintained or operated
3 correctly and so we'll have a corrective action plan. Which may eventually
4 include an upgrade to the facility if that's what needs to be done. During our
5 stake worker work group we laid out some goals. Are main goals is to make that
6 we prevent water quality impacts to receiving streams. We want to reduce and
7 prevent permit back log, as of today we have about 285 expired permits -- lagoon
8 permits and I am going to talk about back log later in my later presentation.

9 COMMISSIONER PERRY: There is 285 expired?

10 MR. MEFRAKIS: Expired. Expired correct.

11 MR. HERRMANN: Lagoons.

12 COMMISSIONER PERRY:(inaudible).

13 MR. MEFRAKIS: No, 285 oh I think the universal lagoons
14 probably around 3,000; municipal around 700. I don't have those figures and
15 these are the numbers that I vaguely remember. And we will be conducting those
16 studies over the five-year period and are we going do a site survey for
17 everyone? We are going to try, maybe in the process as we do a site survey we
18 can collect enough data to tell us something and we may need to change
19 directions on that, but we will try or attempt to look at all the streams and
20 all that. In my belief that we want to design a policy that addresses or can be
21 used as short-term measure and maybe look at some long-term measure to solution
22 the define of water quality impact study. This is not a comprehensive lagoon
23 policy, it only deals with renewals. As far as new construction we haven't
24 attempted to do that we typically give those limits secondary treatment limits
25 30/30 on new lagoons. Obviously, there's different study you can do, use new

1 technology, and conduct modeling and all that for new construction but we
2 haven't attempted to address new construction on this lagoon policy here.

3 COMMISSIONER PERRY: Excuse me would you clarify that?

4 MR. MEFRAKIS: Sure.

5 COMMISSIONER PERRY: For new constructions you are limiting the secondary
6 treatments 30/30.

7 MR. MEFRAKIS: 30/30 correct. And there is an exception to that;
8 you know there is TMDL issue on impairment and all that. The limits may be
9 different. This concludes my presentation and I would be happy to answer any
10 questions.

11 CHAIRMAN HERRMANN: Yeah, there is a few. You have -- you several
12 times throughout this presentation and indeterminate description of low flow.
13 That's indeterminate in my mind. Instead of using something definitive
14 7 Q10 or whatever, something which defines low flow.

15 MR. MEFRAKIS: Well, we have a procedure for low flow surveys and
16 I -- existing so I didn't want to reinvent the wheels and change all that.

17 CHAIRMAN HERRMANN: Where is this low survey?

18 MR. MEFRAKIS: Low survey procedure in your packet it's after the
19 lagoon policy. I believe so.

20 CHAIRMAN HERRMANN: Okay. I would like to review that for my
21 (inaudible). I must have missed that. The other thing is monitoring? The big
22 majority of these lagoons in the State of Missouri are very, very small
23 installations and discharged to dry streams, unclassified streams, dry streams
24 and I have asked the question every time one of these things comes up. Where
25 are you going to do the monitoring? I have gotten two answers. One is in the

1 stream which is essentially taking samples of the effluent and the other one is
2 the first classified stream. Well in a lot of cases a classified stream is 4-5
3 miles away. As a reference one was talked about the last meeting up in -- I
4 forgot. But, that was 4.95 miles from a classified stream, and it was
5 discharging something one-tenth of CFS and nobody ever satisfied me as to where
6 they were going to monitor and what the monitoring was going to show. The other
7 thing that I -- I continually read is that every time we get one of these
8 renewals and you do water quality impact study you come up with instead of 30/30
9 which is secondary requirements you come up with a 15/20 or 10/15 and the stream
10 in my mind does not warrant that kind of protection. Never have we seen the
11 numerical values to come up with that decision.

12 MR. MEFRAKIS: There are two questions you have put together
13 here. One is what do we sample in the stream, I haven't gone out yet and I plan
14 to go out with John Ford on these issues to see what are being sampled. But, my
15 understanding is we have been looking at receiving stream, we will be looking
16 upstream, downstream, and may require some sampling, a lot of visual inspection.
17 The type of study what were looking at it may take twenty to thirty minutes to
18 look at streams, so it's not a full-blown study. That's the extent I can
19 explain, but what low flow stream survey is. We'll be glad to provide you more
20 and a later date, but I included the procedure for that in the packets.

21 CHAIRMAN HERRMANN: Okay.

22 MR. MEFRAKIS: Hopefully, that answers the question.

23 CHAIRMAN HERRMANN: But, if you look at the upstream and downstream in
24 a heck of a lot of these cases the upstream flow is zero.

25 MR. MEFRAKIS: Right. It may not be an issue and lately John

1 Ford had --

2 CHAIRMAN HERRMANN: It has been.

3 MR. MEFRAKIS: What?

4 CHAIRMAN HERRMANN: In these renewals that you have come up with.
5 It has been an issue in my mind.

6 MR. MEFRAKIS: We're attempting to renew those lagoons with -- that
7 have lagoon limits with the same limits. Okay, we are not changing nothing that
8 this policy is saying as a we are not changing the limits that will maintain the
9 lagoon limits if they have lagoon limits we know their no water quality impact
10 -- no water quality impact, there is no violation of limits, there's no TMDL
11 issue then we maintain the same lagoon limits and we -- we issue the renewal as
12 is.

13 CHAIRMAN HERRMANN: I recently got a renewal which was for Rolla for
14 Southwest Plan I guess or Southeast whatever at the Little Beaver Creek and in
15 lieu of the permit requirements for lagoons or even secondary treatment you came
16 up with a 10/15.

17 MR. MEFRAKIS: That is your second question as far as the water
18 quality review sheets when one is needed typically if there was an impairment,
19 if there was expansion, if there was new construction, which this policy does not
20 address then we are talking about a different ball game here we are talking
21 about looking at a real study and what's been proposed by the facility. So I
22 don't know the specifics of the Rolla issue but I will be glad to check into
23 that and see if that falls under our policy or is it

24 MR. GALBRAITH: It was a TMDL issue involved in this as well.

25 MR. MEFRAKIS: A TMDL okay and that's not addressed on this

1 lagoon. If we have a TMDL issue this policy does not address that. It has to
2 go through TMDL process and deriving the permit limits.

3 CHAIRMAN HERRMANN: Okay.

4 COMMISSIONER PERRY: One more question, please.

5 MR. MEFRAKIS: Sure.

6 COMMISSIONER PERRY: Is the result of a work group policy recommendation?

7 MR. MEFRAKIS: Correct.

8 COMMISSIONER PERRY: Could you tell me who was participating in that work
9 group?

10 MR. MEFRAKIS: Some of the names are: Mary West, Missouri
11 MPUA, some of the engineered consulting --
12 engineering companies were involved, and I had a couple to the staff.

13 MR. GALBRAITH: Two of the regional sewer districts, some of the
14 larger ones were involved as well.

15 COMMISSIONER PERRY: Do you feel all of the stakeholders were involved?

16 MR. MEFRAKIS: Oh yeah. Definitely. Were they involved you
17 mean?

18 COMMISSIONER PERRY: All the view points of people who had a strong stake in
19 this. Did they participate?

20 MR. MEFRAKIS: I feel so. I feel that's the case. I don't if
21 covered everybody or involved everybody, but I think we had good participation.

22 CHAIRMAN HERRMANN: You've got several consultants included in the

23 MR. MEFRAKIS: And plus also (inaudible) included engine
24 consultants, representative for the small lagoon and the environmental groups
25 too. And, I mean we on the second -- the first draft -- initial draft we got

1 total opposition. This is -- nobody liked it, I mean I was kind of shocked
2 cause I thought we could maybe renew these permits and have some in stream and
3 have -- give them the ability to do their own study and so it was a strong
4 reaction and we abandoned the first initial and we just created a second one,
5 which I received a lot of support from the work group on this particular -- on
6 the final lagoon policy.

7 CHAIRMAN HERRMANN: I found your low flow stream surveys on page 188
8 of the booklet. It talks about low flow stream surveys. It says low flow many
9 times in that paragraph. It doesn't define low flow.

10 MR. GALBRAITH: Page 195 is the -- were the SOP for low stream survey
11 is and it's not low flow, it's not like 7Q10 it's more tied to what -- what the
12 recent rainfall events have been. It's -- it's in other words it's your going
13 out at that time of year when you would expect to see the -- what would
14 typically be considered a low flow for the stream. It's not a -- it's not a --
15 there's no numeric value, like you would use in a model or something like that.
16 I think specifically says if rainfall over the past two weeks totals less than
17 2.5 inches and no 24 hour total exceeds one inch conditions should be acceptable
18 for a low flow survey. But, don't be confused by the -- we -- we define low
19 flows elsewhere in our regulations for the purposes of modeling this is a little
20 bit different.

21 CHAIRMAN HERRMANN: Yes.

22 MR. MEFRAKIS: Yes, we're not saying maybe this is the best model
23 for doing water quality impact study like again we said that it's not defined so
24 we are trying to make the best of what we have as a short term measure.
25 Eventually, we will learn more. We may enhance our review process, survey

1 process, but I feel this is a more of a short term measure and to define that is
2 maybe the next five years.

3 CHAIRMAN HERRMANN: No. Mary, did you want to add something?

4 MS. WEST: Just a couple of comments. I did participate in the
5 stakeholder group and overall I think it's a good idea to get these lagoon
6 permits issued. I wish they had been done before December of 05' so these
7 facilities did not have to meet disinfection now also in that same time frame.
8 I have a question about requiring stream surveys for these renewal permits for
9 lagoons only. I don't think there required for any other type of permit renewal
10 and I would question if that's an issue with the department or with other permit
11 holders. I hate to single out one group of -- or type of treatment for this
12 kind of scrutiny and particularly in the cases were a lot of these facilities
13 are very small. I would ask that for lagoons that have to meet new requirements
14 because of stream surveys or disinfection or whatever, that if they have to do
15 upgrades to their facilities that they be given a five-year compliance schedule
16 or the length of their permit rather than the three-years allowed by rule and I
17 think that -- that requires a rule change and I know that were getting ready to
18 open some of those probably at the end of the year, but I would ask that those
19 lagoons be allowed that same five-years particularly in light of the fact that
20 the department held so many of these permits waiting on these -- on this policy.
21 The other question that I had I have looked at some permits from some of our
22 members over the last few weeks and influent monitoring has kind of been hit and
23 miss in some of the draft permits that have (inaudible, microphone goes out) (is
24 that better) it's not been required in all of the permits and I think if -- if
25 you are going to require percent removal efficiencies for these facilities that

1 influent monitoring needs to very specific and it needs to specified in those
2 permits. The other questions that I have is -- is percent removal efficiency
3 and instantaneous measurement or is it something that averaged over a period of
4 time as you know most lagoons have detention times of thirty days to one hundred
5 or one hundred and twenty or one hundred and eighty days and I think percent
6 removal efficiencies is going to be kind of difficult to calculate if there's no
7 specific procedure to do so. And that's my concerns. Thank you.

8 CHAIRMAN HERRMANN: Very good, thank you Mary.

9 MR. MEFRAKIS: Would you like me to answer any of those?

10 CHAIRMAN HERRMANN: Yeah, if you have a comment.

11 MR. MEFRAKIS: A couple things is one we are not singling
12 facilities here or anything we try to show a -- a create procedure were we can
13 show compliance for all state regulations. We use an existing program here and
14 were just enhancing that to do additional work.

15 MR. GALBRAITH: Well, and let me add to that. It's -- it's not
16 that we are singling out lagoons and trickling filters. It's the regulation
17 that singles them out for higher less stringent limits, pending the showing that
18 those higher limits are having impacts. We are not -- we are not starting from
19 a level playing field with these and packaged plants and all the other
20 technologies. These types of facilities are getting a pass or higher limit
21 based on their technology, but along with that limit comes the requirement that
22 you show that you are not having a -- you are not causing pollution. So it's --
23 it's if you want to have one you got to have the other.

24 MR. MEFRAKIS: As far as the schedule of compliance. Our state
25 regulations specifically states that -- that we must be -- the facility must be

1 in compliance within three years and that's where our hands are tied.

2 CHAIRMAN HERRMANN: Well, that's why Mary suggested to go through and change.

3 MR. MEFRAKIS: Correct, yeah. I think as far as the percent
4 efficiency we will be glad to define that. When is the average, I think, we're
5 looking at monthly. Looking month to month to determine what the efficiency
6 needs to be. How its efficiencies determine. We can provide that it's not
7 clear in our state operating permits.

8 CHAIRMAN HERRMANN: Do you have a comment on disinfection requirement?

9 MR. MEFRAKIS: My only comment on that is I understood that we
10 had a three year schedule of compliance that the commission desired to lengthen
11 that disinfection to a five years to address some of these issues.

12 CHAIRMAN HERRMANN: Mary was talking about

13 MR. MEFRAKIS: Getting a permit before December to get the
14 maximum -- full maximum maybe eight years or more.

15 MR. GALBRAITH: Well, if they had gotten -- if we had renewed their
16 permits last year they would have gotten a five plus three for compliance. Now
17 that the permits reissued this year they get five so they essentially lose 3
18 years. The permits issued a year later so they lose two years off their -- off
19 of their time frame to address disinfection or bacteria. We were aware that
20 we were creating this problem it's an unfortunate consequence of the -- of this
21 process and how long it took and that same time I want the commission to be
22 aware we were facing serious threat of law suits as long as we continued to
23 issue these permits and in fact we still are even with this procedure doesn't
24 make that threat go away. Although, I think it's seriously lessons that threat.
25 But, we had to make a prudential decision to hold those permits given what we

1 thought were the liabilities as far as litigation.

2 CHAIRMAN HERRMANN: I am not talking about time frame. I am talking
3 about the imposition of the requirement for disinfection on lagoons
4 specifically. And that was what Mary was mentioning.

5 MR. GALBRAITH: Okay.

6 CHAIRMAN HERRMANN: I think in your presentation on the statement of
7 the issue your third bullet said MDNR did not have sufficient data to determine
8 which lagoons are causing problems. I would say in those -- in a lot of those
9 cases its assumed problems and I have the same opinion about disinfection on
10 lagoons which conform with our regulations. Which, require 120 days detention
11 and I think before disinfection should be required there should be monitoring to
12 see if it is in fact required or if it's throwing money into the wind to require
13 it on the lagoon.

14 MR. MEFRAKIS: There was a provision in as far as disinfection to
15 neither disinfect, do a UAA, or come up with a study. And a study would
16 basically be doing reasonable potential just as exactly what you are talking
17 about is allow them to monitor in this period of time and then we can do a
18 reasonable potential and see if disinfection would be required or not.

19 CHAIRMAN HERRMANN: That has not been the case in these re-issuance of
20 permits. It's been do this period. It's not been studied.

21 MR. MEFRAKIS: When the permits are issued now, when we renew all
22 these lagoon permits they'll have a maximum of five years to do the monitoring
23 requirements or at least we have a final limit in five years. So they have a
24 five year period were they can do monitor effluent and decide and with that data
25 we can use that data to do a reasonable potential and determine whether a

1 disinfection would be required after that upon next renewal.

2 CHAIRMAN HERRMANN: I think that should be stipulated for all
3 parameter.

4 MR. MEFRAKIS: We conduct in the fact sheet were the permit
5 writers supposed to be doing reasonable potential for all parameter. With the
6 exception of a few

7 CHAIRMAN HERRMANN: He's doing it not in concert with the -- with the
8 user but he's doing it as his own data. I think it should be done in concert
9 with the operator of the facility or the owner of the facility. Okay, well I
10 think it's a good start.

11 MR. MEFRAKIS: I am here to answer your questions.

12 CHAIRMAN HERRMANN: Any other comments.

13 MR. BRYAN: Chairman Herrmann if I may I got one clarification.
14 I understand Refaat that you're not asking the commission -- the departments not
15 asking the commission today to adopt this or to change new rules or anything
16 like that.

17 MR. MEFRAKIS: No, this is for your information that we have
18 adopted that and were proceeding with renewals and this should help our backlog.

19 CHAIRMAN HERRMANN: In affect the new (inaudible) stakeholder group.

20 MR. MEFRAKIS: Yeah.

21 COMMISSIONER PERRY: I think you referred before that you would explain
22 that back log that -- more fully. You said you had 285 expired permits.

23 MR. MEFRAKIS: Expired permits. Not all of the expired permit
24 means in the backlog, because it could be expired but still within the time
25 frame of 60 days or 180 days.

1 COMMISSIONER PERRY: Okay. Of the 285 expired how many are not within the
2 limits of the backlog?

3 MR. MEFRAKIS: That, I don't know the answer. Specifically, but
4 will be happy to get that information. I know -- I know I pulled -- I wanted to
5 get how many we have expired that requires some computer manipulation between
6 the two systems to get that number, so.

7 COMMISSIONER PERRY: I would like that report at the next meeting so that we
8 can keep track of these things. If this is helping to get them out then I'd
9 like to see them as they get cleared up.

10 MR. MEFRAKIS: Sure. I would be glad to.

11 CHAIRMAN HERRMANN: Thank you.

12 MR. MEFRAKIS: Thank you.

13 CHAIRMAN HERRMANN: **Tab #8. St. Louis 208 Water Quality Management**
14 **Plan** by Kevin Mohammadi.

15 MR. MOHAMMADI: Good Morning.

16 CHAIRMAN. HERRMANN: Good Morning.

17 COMMISSIONER PERRY: Do we have lights up here?

18 CHAIRMAN HERRMANN: Let there be light.

19 COMMISSIONER PERRY: Thank you.

20 MR. MOHAMMADI: Mr. Chairman, members of the commission at the
21 March 1, 2006 Clean Water Commission meeting the commission
22 directed the Festus Crystal City to contact a Environmental
23 Protection Agency to determine if the commission has the independent authority
24 to approval variance from federally mandated 208 Plan. On May 2, 2006 the
25 East-West Gateway Counsel of Government sent a letter to the EPA Region VII,

1 regional administrator on behalf of the Festus Crystal City requesting that
2 original St. Louis 208 Water Quality Management Plan be amended to eliminate the
3 requirement for the construction of outfall sewer to the Mississippi River and
4 unlawful direct discharge into Plattin Creek. On June 2nd, 2006 EPA approved
5 the request. This is just for your information.

6 CHAIRMAN HERRMANN: I think we also had a request for the water quality
7 impact study.

8 MR. MOHAMMADI: Mr. Chairman we weren't quite clear exactly what
9 did you have -- commission had in mind because the permits that is issued that
10 limits water quality base limits.

11 CHAIRMAN HERRMANN: Based on a water quality impact study.

12 MR. MOHAMMADI: It's water quality based limit that means that the
13 limit that is in the permit must be protective of beneficiaries of this stream.
14 So, there is no impairment to this stream from the discharge.

15 MR. GALBRAITH: Would the commission like to see a copy of the permit
16 with those limits.

17 CHAIRMAN HERRMANN: I would have to go back to my memory of a meeting
18 or two ago where we suggested that we wanted to see a water quality impact study
19 as well. Which, would satisfy the commission that yes there were no adverse
20 effects of discharge to Plattin Creek which was the original basis for the
21 requirement in the 208 Plan.

22 MR. GALBRAITH: We can provide the water quality review sheet which
23 has all those calculations.

24 CHAIRMAN HERRMANN: I think -- that would be beneficial, yes.

25 MR. GALBRAITH: Why don't we try to get that before the end of today

1 and have it faxed over, Kevin.

2 MR. MOHAMMADI: Sure, that would be fine we can do that.

3 CHAIRMAN HERRMANN: Thank you any questions to Mr. Mohammadi? Thank you,
4 Kevin.

5 CHAIRMAN HERRMANN: Okay, yeah my larger cup has run dry and there is
6 probably some people in need of sanitary conveniences, so we will declare about
7 a five minute recess.

8 CHAIRMAN HERRMANN: I think are five minutes is expired. We will now
9 come back and considered **tab number nine. Status of the 2006-303(d) list.** Joe
10 Boland (laughter), sorry Phil Schroeder, you changed.

11 MR. SCHROEDER: You can call me whatever you want chairman
12 (laughter). Well, thank you. At your last meeting in June you approved
13 revisions to the methodology for compiling the next 303(d) list. What we want
14 to present to you is a schedule as to when we are going to be able to get that
15 list finally compiled. When you approved those revisions it has enabled the
16 staff to put together an effort to begin in earnest to get that list compiled
17 and we are busily doing that at this present time. What we would like to do is
18 present this schedule to you and offer you to any opportunities that you have to
19 let us know if you feel that this schedule is appropriate or not. But, with the
20 changes we've made is that we feel we need perhaps up to four months to be able to
21 re-evaluate the data in accordance with the new methodology that you just
22 recently approved so that we can come back to you in October and present to you
23 a draft 303(d) list for ready for public comment period at that time. As you
24 know, the statute recently changed to require a 90-day public comment period on a
25 draft 303(d) list and looking at that requirement in this schedule we feel we

1 can get to the commission a finalized list that's been through public comment by
2 March of 2007. So, unless you have any questions about that, I guess -- I guess
3 that's really only presentation I have to make to you today on -- on the 303(d)
4 lists. Hopefully, you've received the revisions. I think I've been informed
5 that you've -- you've gotten by mail a copy of the latest revisions to the
6 methodology that you approved at the June meeting. Were going to be posting
7 that on the web-site if -- if it isn't already posted there for the rest of the
8 public to see. There was a -- Ed, thank you for bringing up a typographical
9 error in the table of schedule, shown on the far left handle column the lowest
10 entry there, it says draft order of rule making on a 303(d) lists. As you know,
11 the -- the statute was recently changed not to require rule making for the list
12 itself so, it should just read draft 303(d) list rather than any rule making
13 process involved there.

14 MR. GALBRAITH: I think if I may Phil, one question that I would like
15 the commission to answer is, if the program compiles the list the statute is
16 silent on the question of whether the commission approves the public noticing of
17 that list. So, the way this schedule reads is: Compiled the List October 19th
18 2006, Public Noticed the List October 21st 2006. You'll notice there is no
19 Clean Water Commission action there, the Clean Water Commission action would
20 happen first of the hearing January 9th and then a final decision on March 7th.
21 If the commission is comfortable with that we will proceed in that manor. What
22 that gives us is -- it buys us some additional time. Otherwise, we would wait
23 until our November meeting to present the list to you for your approval before
24 we public notice it, but that would add another three-weeks to the overall time
25 frame. By your puzzled look I assume that I have not explained myself clearly.

1 COMMISSIONER PERRY: I'm sorry. It's not a -- the final action by the
2 commission it's -- kind of -- what were thinking about.

3 MR. GALBRAITH: Correct.

4 MR. SCHROEDER: One of the things the staff has been thinking very
5 carefully about in this whole process is making sure that we can move smoothly
6 through this whole process. You know, the 303(d) list has been a very
7 contentious issue in the past and what we want to do is make sure that we don't
8 bring the contention to the Clean Water Commission meeting. And, what we'd hope
9 to do in order to avoid any kind of lengthy discussion in front of the Clean
10 Water Commission is to be able to during the public notice, that's a 90-day
11 period as required by statute allow for public meetings with those that have
12 interest and how the 303(d) list was compiled. So, during the public comment
13 period we would like to have stakeholder meetings where we discuss the
14 proposed 303(d) list that went out on public notice, how it was compiled,
15 answer questions, and even get some information back at that time so that we can
16 help each other. Stakeholders themselves, and even the commission obviously,
17 would be invited to these meetings to resolve some of those issues before
18 it gets back to the commission in March. Hopefully, at that time we would have
19 all the questions and any issues hopefully resolved.

20 COMMISSIONER PERRY: And, to that I say bravo. This is my third time to
21 go through this process and each time it's been better, and this is by far the
22 best, yet. Because of that attitude of trying to work things out ahead of time
23 and I salute you and the whole team for working so hard in that way.

24 MR. SCHROEDER: Thank you.

25 CHAIRMAN HERRMANN: Any other questions to Mr. Schroeder. Thank you,

1 Phil.

2 MR. SCHROEDER: Thank you.

3 CHAIRMAN HERRMANN: **Tab number eleven. State Revolving Fund.**

4 MR. BOLAND: Morning Mr. Chairman, members of the commission.

5 I am in deed Joe Boland of the Financial Assistance Center within the Water
6 Protection Program. Actually, I think its item ten. Isn't it **tab ten**?

7 CHAIRMAN HERRMANN: Yes.

8 MR. BOLAND: I would like to discuss a couple of revisions to
9 our intended use plan. The first would be we received notice from the City of
10 Dexter that they successfully passed a four and a half million bond issue on June
11 6th So according with - our readiness to proceed criteria that would allow them to
12 be placed on the fundable projects lists. However, due to funding at this point
13 in time we don't have adequate funding to fund them so we propose they be placed
14 on the fundable contingency list. Now, when the funds become available then we
15 could move them to the fundable list. Also, the City of Trenton submitted an
16 application on June 7th of 06' along with a facility plan and they're requesting
17 eight million dollars to upgrade their waste water treatment plant and extend
18 the treatment plants ability to handle wet weather related flows. We -- we
19 propose to place Trenton on the contingency list. A recommended action as it
20 states in your briefing is to move the City of Dexter from the contingency
21 projects list to the fundable contingency projects list and add the City of
22 Trenton to the contingency projects list. Any -- any questions?

23 CHAIRMAN HERRMANN: No questions. I have a comment after -- after the
24 vote. **Chair would entertain a motion to accept the revisions to the State**
25 **Revolving Fund Plan as presented by Mr. Boland.**

1 COMMISSIONER HARDECKE: I move that.

2 COMMISSIONER EASLEY: I second.

3 CHAIRMAN HERRMANN: Moved and seconded. Please call for the vote,
4 Malinda.

5 MS. OVERHOFF: Commissioner Kelly?

6 COMMISSIONER KELLY: Yes.

7 MS. OVERHOFF: Commissioner Perry?

8 COMMISSIONER PERRY: Yes.

9 MS. OVERHOFF: Commissioner Hardecke?

10 COMMISSIONER HARDECKE: Yes.

11 MS. OVERHOFF: Commissioner Easley?

12 COMMISSIONER EASLEY: Yes.

13 MS. OVERHOFF: Commissioner Tupper?

14 COMMISSIONER TUPPER: Yes.

15 MS. OVERHOFF: Chairman Herrmann?

16 CHAIRMAN HERRMANN: Yes.

17 CHAIRMAN HERRMANN: Thank you. I'd for my curiosity I'd like to see
18 the 201 Plan for Dexter?

19 MR. BOLAND: Okay, we can provide that.

20 CHAIRMAN HERRMANN: I'll explain it a little bit. In Mid-1950's
21 Dexter had a treatment plan, right along Highway 60 as you came into town and it
22 was replaced -- by design -- well, I would say that the basis for design was
23 obviously population because Dexter at the time had a population of 5500. So
24 they previous engineer designed a plan for our population equivalent of 5500.
25 They forgot that there were three meat-packing plants, and two cheese plants in

1 town at the time. So it never met quality standards the first day that it went
2 on line. And, the only people who objected to doing away with that plant was the
3 Missouri Highway Department and the reason they did is because they said the
4 treatment plant that was inadequate was down below the viaduct over the railroad
5 tracks as you came into town. And, if that plant were taken out nobody would
6 remember or nobody would know when they got to Dexter, driving on Highway 60.
7 Just for my own curiosity I'd like to see the facility plan.

8 MR. BOLAND: We can do that.

9 CHAIRMAN HERRMANN: Thank you.

10 COMMISSIONER PERRY:(Inaudible) not here but who lives five miles South of
11 Dexter we appreciate your update.

12 CHAIRMAN HERRMANN: Move to **tab eleven**.

13 MR. BOLAND: This involves the **Metropolitan Sewer District**.

14 CHAIRMAN HERRMANN: Right.

15 MR. BOLAND: MSD currently has the Lemay Wastewater Treatment
16 Plant Wet Weather Project Phase I on the 07' intended use plan and fundable
17 projects list. MSD staff contacted us to discuss the possibility of delaying
18 the funding for the Lemay Project and replacing it with other critical MSD waste
19 water system projects. As originally proposed the Lemay Project was estimated
20 to be about 89 million due to limited funds on our end we worked with MSD to
21 phase that project. Phase I was estimated to be about 76 million as it currently
22 stands on the IUP for 07'. MSD is requesting that the Lemay Project be replaced
23 with the Creve Coeur L-52 Pump Station Improvement project for the amount of 16
24 million. What this does is it frees up about 60 million for other projects on
25 our fundable contingency list. If the substitution is approved then we can move

1 the City of Dexter as well as Kansas City to the fundable list. We recommend
2 that we substitute Lemay Wastewater Treatment Plant with the Creve Coeur L-52
3 Pump Station in the amount of 16 million, remove the Lemay Wasterwater
4 Treatment Plant Wet Weather Project Phase II from the fundable contingency list
5 and then move the projects for the Cities of Dexter and Kansas City to the
6 fundable list. Is there any questions there?

7 CHAIRMAN HERRMANN: I guess we've handled Dexter and Trenton by the
8 previous motion.

9 MR. BOLAND: Yes, sir.

10 MR. GALBRAITH: Okay, but in this one it's kind of a two-step
11 process. In the last one you added Dexter to the contingency now with the
12 availability of funding you can move them to the fundable -- move Dexter to the
13 fundable list.

14 CHAIRMAN HERRMANN: I see. Okay. Yeah, Susan does MSD have anything?
15 I saw Susan a while ago, is she still here? Okay.

16 MR. TYMINSKI: We are -- we are confirming with this our Lemay Plant
17 Project has grown in costs from the original 40 to 50 million to its current 89
18 million dollar number. We need to have funding for that -- that will not happen
19 in this budget year. It will happen in the next budget year. We're
20 contemplating either rate increase or another bond issue at that point in time.
21 So its-- it's the size of the project it was just too big of multitude for us
22 right now. And, so we delayed that and would like to substitute the L-52
23 Project, which is Creve Coeur Pump Station and were trying to eliminate somewhat
24 with the bypasses of that.

25 CHAIRMAN HERRMANN: Where's that located?

1 MR. TYMINSKI: Creve Coeur Mill Road, you know how you go down into
2 the flat land before the Creve Coeur Mill Park area.

3 CHAIRMAN. HERRMANN: Right.

4 MR. TYMINSKI: That's the pump station sitting right there. We
5 already own the land. It currently has been there for twenty-years we are going
6 to renovate that station and upgrade it at the same time.

7 CHAIRMAN HERRMANN: It's the present --

8 MR. TYMINSKI: Present location, exactly.

9 CHAIRMAN HERRMANN: Okay.

10 MR. TYMINSKI: Same thing right as you come down the hill.

11 CHAIRMAN HERRMANN: Yeah, right. Thank you

12 MR. GALBRAITH: For the record. Can you state your name please?

13 MR. TYMINSKI: My name is Karl Tyminski. K-A-R-L Tyminski.
14 Thank you.

15 CHAIRMAN HERRMANN: Thank you, Karl. Any questions of MSD or Mr.
16 Boland? Hearing none, **chair would entertain a motion relative to transferring**
17 **funds and also approving the funding for Dexter and Kansas City or Trenton.**

18 COMMISSIONER PERRY: I so move.

19 COMMISSIONER HARDECKE: Second.

20 CHAIRMAN HERRMANN: Moved and seconded, please call for the vote
21 Malinda.

22 MS. OVERHOFF: Commissioner Perry?

23 COMMISSIONER PERRY: Yes.

24 MS. OVERHOFF: Commissioner Hardecke?

25 COMMISSIONER:: Yes.

1 MS. OVERHOFF: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. OVERHOFF: Commissioner Tupper?

4 COMMISSIONER TUPPER: Yes.

5 MS. OVERHOFF: Commissioner Kelly?

6 COMMISSIONER KELLY: Yes.

7 MS. OVERHOFF: Chairman Herrmann?

8 CHAIRMAN HERRMANN: Yes.

9 CHAIRMAN HERRMANN: Okay, **tab number twelve** you're still on deck, Joe.

10 MR. BOLAND: Thank you, sir.

11 This is an item we wanted to bring to your
12 attention. As you our aware are EPA Capitalization Grants require a 20% state
13 match. Historically that match has been provided through the sale of water
14 pollution control bonds. However, beginning in the fall 2004 leverage loan
15 closing we began providing that match through state matching bonds at the time
16 of closing. Principle and interest payments on those water pollution control
17 bonds that had been sold previously are being paid through the states general
18 revenue, with the exception of the 2002 bond series. On the 2002 Bond Series we
19 are currently using SRF interest earned to pay down that -- that principle and
20 interest. If I made that clear enough. At this time EPA has approved the use
21 of SRF interest earnings to be applied to pay down current debt service on other
22 series bonds, not just the 2002 series. This is still -- we still must request
23 a modification through our SRF grant application to modify our program. And,
24 again this debt service is from the point of EPA approval forward. We're
25 currently analyzing the impact on -- on the SRF if we do use these interest

1 earnings to pay -- pay down this water pollution control bond debt. It -- it is
2 the department's intent to utilize as much of the SRF interest earnings as may
3 be available to provide relief to the state's general revenue burden. Any
4 questions I can answer that issue?

5 CHAIRMAN HERRMANN: Currently the interest on the bonds is taken out of
6 general revenue?

7 MR. BOLAND: Correct, other than the 2002 series. We pay the
8 interest on that through SRF interest earnings.

9 CHAIRMAN HERRMANN: And, through the SRF program and it's twenty plus
10 years of existence there has been zero default.

11 MR. BOLAND: As far as my knowledge, yes.

(End of Tape 1 Side B)

12 COMMISSIONER PERRY: Paid that way we are talking about prior to 2002?

13 MR. BOLAND: Correct, any bonds that may have been issued prior to 2002
14 any debt service from this point forward we would be paying on.

15 COMMISSIONER PERRY: Out of the --

16 MR. BOLAND: Not -- not his -- it wouldn't be recouping any of
17 that --

18 COMMISSIONER PERRY: What is paid, I understand.

19 CHAIRMAN HERRMANN: Any other questions?

20 MR. BOLAND: Any other questions?

21 CHAIRMAN HERRMANN: Thank you, Joe.

22 MR. BOLAND: Thank you.

23 CHAIRMAN HERRMANN: **Tab number thirteen, Southwest City Variance**
24 **Request**, Richard Laux.

25 MR. LAUX: Good morning.

1 CHAIRMAN HERRMANN: Morning.

2 MR. LAUX: At our last meeting presented the variance request from the
3 City of Southwest City the commission voted preliminarily to approve and public
4 notice and our intention to approve it at this meeting. We did the public
5 notice and -- including sending a copy to the State of Oklahoma, received no
6 comments and so staff today is recommending commission grant final approval of
7 the requests and for the time frame that the city had it requested.

8 CHAIRMAN HERRMANN: Can you refresh our memory as to that time frame,
9 Richard?

10 MR. LAUX: Let's see we included the application this time,
11 so you can see it. Basically, the current affected date for final limits is
12 September 1 of this year. The proposed date is December 31 of 2007. So little
13 over a year and a couple months.

14 CHAIRMAN HERRMANN: Okay.

15 MR. LAUX: And, this is not proposing any change in effluent
16 limits just the schedule to upgrade the facility.

17 CHAIRMAN HERRMANN: Okay. Any questions to Mr. Laux? Anyone here
18 from Southwest City?

19 MR. LAUX: I think there consultant is here.

20 CHAIRMAN HERRMANN: Do you have any comments or statements you would
21 like to make, sir?

22 Unidentified Speaker:(Inaudible statement).

23 CHAIRMAN HERRMANN: Okay, thank you. Any other questions? Hearing
24 none, chair would entertain a motion to grant final approval.

25 COMMISSIONER EASLEY: I move that the Clean Water Commission grant final

1 approved of the requested variance.

2 COMMISSIONER TUPPER: Second.

3 CHAIRMAN HERRMANN: Mr. Tupper seconds. Keep it down in the Southwest
4 corner of the state. (laughter). Any other discussion? Hearing none, chair
5 will declare the motion passed.

6 CHAIRMAN HERRMANN: Tyson Food Variance Request, Richard Laux.

7 MR. LAUX: At the last meeting we had some discussion about
8 this particular one and the commission at the end of the meeting voted to direct
9 staff to potentially, or to public notice their intention to possibly approve
10 this at this meeting. We have met with the applicant and discussed some of the
11 issues that were discussed at the last meeting. I think staff is still of the
12 opinion that it's appropriate to make a recommendation to approve the variance
13 request establishing the time frame to do a biological study to determine
14 whether some relief in the temperature standards would be appropriate. So,
15 unless the commission has additional concerns they would like addressed we are
16 ready to recommend approval of the variance for the life of the current permit
17 with a possible extension at that time. Depending on the outcome of the study
18 itself.

19 CHAIRMAN HERRMANN: I think I read in here that their requesting seven
20 years.

21 MR. LAUX: That's correct.

22 CHAIRMAN HERRMANN: I guess that was on -- in the minutes of the last
23 meeting.

24 MR. LAUX: And that included a period of time that if the study is
25 successful at establishing an alternate temperature standard that included the

1 time it would take to put it into rule and then eventually the permit. What
2 staff, the committee thought was appropriate was to approve it for the current
3 permit period and at that point in time depending on the results of the study it
4 may or may not need to be put into rule. And, if it needs to be put into rule
5 we would be back recommending an extension of the variance so that that process
6 could occur. There is some chance that their study wouldn't be successful,
7 which case we'd have to proceed at that point. But, if the study does show that
8 some relief is appropriate then we will have to before we can put in the
9 permit will have to do rulemaking, but the period of time we're proposing should
10 allow for the study to be completed, and we would be at a point where we would
11 know whether the rulemaking is needed or not. And, that's the only reason
12 why we shortened the period of time up. We do agree that it's going to be
13 somewhat time consuming to put it into rule, obviously you have been through a
14 bunch of rulemakings recently they do take some period of time.

15 CHAIRMAN HERRMANN: My memory fails me. I think we asked what was the
16 receiving stream at the last meeting.

17 MR. LAUX: It's a tributary to Little Muddy Creek.

18 CHAIRMAN HERRMANN: Tributary to Little Muddy Creek, okay. How
19 far
19 is -- is it to Little Muddy Creek? Rough.

20 MR. LAUX: It's about a mile or a mile and a half somewhere
21 in that range I believe.

22 CHAIRMAN HERRMANN: And, I am told that this is a significant volume
23 of water out of this plant, is that correct?

24 MR. LAUX: It's pushing about a million gallons, I believe a
25 day. I don't think it's that all the time, but it can be as much as a million

1 gallons per day.

2 CHAIRMAN HERRMANN: Which is probably an excessive of flow --
3 flow in Little Muddy.

4 MR. LAUX: Yes.

5 CHAIRMAN HERRMANN: Okay, any questions. Well, we do have a card of
6 request from Jimmy Mardic. Yes sir.

7 MR. MARDIC: I had a note there only if the commission has
8 questions.

9 CHAIRMAN HERRMANN: I see, okay.

10 MR. MARDIC: We are in agreement with the department.

11 CHAIRMAN HERRMANN: Very good. Any questions of either representative
12 or Richard? **Hearing none, the chair would entertain the motion relative**
13 **to approval of the conditions of Tyson Food Variance Request.**

14 COMMISSIONER HARADECKE: I'll make that motion.

15 CHAIRMAN HERRMANN: Are they seconded?

16 COMMISSIONER PERRY: I'll second.

17 CHAIRMAN HERRMANN: Moved and seconded. Any discussion, questions?
18 **Hearing none, the chair would declare this motion passed.**

19 CHAIRMAN HERRMANN: Thank you, Richard.

20 MR. LAUX: Thank you.

21 CHAIRMAN HERRMANN: Thank you, sir.

22 CHAIRMAN HERRMANN: We'll get to **referrals, Harold Cresswell, Stone**
23 **County.** I guess were into Kevin Mohammadi's area.

24 MR. MOHAMMADI: Mr. Chairman, members of the commission Mr. Harold
25 Cresswell owns and operates two small resorts, Cedar Haven & Shoreline located

1 in Little Indian Creek arm of Table Rock Lake. There is a long history of
2 compliance issues with both facilities. Cedar Haven Resort has failed to submit
3 discharge and monitoring reports since 1997, failed to renew the operating
4 permits since August 2002, failed to provide disinfection since 1998, and the
5 annual permit fee have been delinquent since July 2002. Shoreline Resort is
6 served by an unpermitted lagoon. The department staff have met with Mr.
7 Cresswell numerous times and explained that he is required to -- what is he
8 required to do to resolve the violations. Mr. Cresswell has not made any
9 progress to resolve the violations and has stated to the department staff that,
10 "he doesn't think he needs a permit and intends to fight it out in court." The
11 program recommends the commission to refer the matter to the Attorney General's
12 office for appropriate legal action.

13 CHAIRMAN HERRMANN: Is Mr. Cresswell or any representative here
14 present? Apparently not, **chair would entertain a motion relative to referral of**
15 **Mr. Harold Cresswell for action.**

16 COMMISSIONER KELLY: I'll move.

17 COMMISSIONER TUPPER: Second.

18 MR. HERRMANN: Moved and seconded. Any discussion, questions?
19 Hearing none, chair would declare this motion passed.

20 MR. BRYAN: Can we have a role call vote on that one?

21 CHAIRMAN HERRMANN: Yes, sir. Would use please call for the role,
22 Malinda?

23 MS. OVERHOFF: Commissioner Tupper?

24 COMMISSIONER TUPPER: Yes.

25 MS. OVERHOFF: Commissioner Kelly:

1 COMMISSIONER KELLY: Yes.

2 MS. OVERHOFF: Commissioner Perry?

3 COMMISSIONER PERRY: Yes.

4 MS. OVERHOFF: Commissioner Hardecke?

5 COMMISSIONER HARDECKE: Yes.

6 MS. OVERHOFF: Commissioner Easley?

7 COMMISSIONER EASLEY: Yes.

8 MS. OVERHOFF: Chairman Herrmann?

9 CHAIRMAN HERRMANN: Yes.

10 MR. MOHAMMADI: Next item is **Triad Development** in February 2006 the staff
11 conducted investigation of two different development sites in Lincoln County owned
12 by Triad Development Inc. After one site the staff discovered that sedimentation
13 controls were grossly inadequate and completing lacking at the other. Staff also
14 observed that the receiving stream for these sites have been impacted with heavy
15 deposits of silt due to the lack of inadequate best management practices. In
16 December 2001 Triad entered into a settlement agreement with the department to
17 resolve the past violation of Missouri Clean Water Law at the site know as
18 Kisker Road Tract in St. Charles County as part of this agreement Triad also
19 agreed to comply fully with all requirements contained in all current and
20 future general Missouri State operating permits for land disturbance. Due to the
21 past history of non-compliance and the severe impact of the receiving stream
22 the staff recommends the matters be referred to the office of attorney general.

23 COMMISSIONER PERRY: I -- one question I thought when you were just
24 speaking you said St. Charles and this is Lincoln County.

25 MR. MOHAMMADI: The 2001 case was in St. Charles that was settled

1 and Triad agreed to comply with Missouri Clean Water Law. The two new sites are
2 in Lincoln County.

3 COMMISSIONER PERRY: Okay. Thank you for the clarification.

4 COMMISSIONER EASLEY: Have you had any communications with them since
5 February 16th?

6 MR. MOHAMMADI: We have sent inspection reports letter that they
7 will be referred to the office of Missouri Attorney General Office.

8 COMMISSIONER EASLEY: And, no response?

9 CHAIRMAN HERRMANN: We do have representatives here, Bill. We have a
10 request card from, Douglas Lee of Triad Development.

11 MR. COLLIER: Morning, my name is Don Collier. Doug Lee and
12 John Stetzel are actually two of our project managers who've actually met on
13 sight several different times with representatives of DNR and the two projects
14 he's referencing Anna Meadows and The Hamptons. The Hamptons did have some
15 siltation that went off-site and we've got -- we got a letter on that and there
16 were three items and we've corrected all three of those. Excuse me. We've had
17 DNR back out and they've looked at it several different times and we haven't had
18 any off-site siltation since. And, Anna Meadows we have never had any off-site
19 siltation, we've had them out there to look at the site and we've gotten a few
20 comments and you know they've recommended a few different things that we could
21 do, which some of those we've taken and done. But, our stance is we've had our
22 silt fence up and we fill that we're doing -- doing what you guys want to keep
23 -- keep our streams and waters clean.

24 CHAIRMAN HERRMANN: Okay.

25 COMMISSIONER PERRY: Excuse me. Is -- is this visible from Highway 61?

1 MR. COLLIER: The Hamptons is Anna Meadows is not.

2 COMMISSIONER PERRY: That's what I -- I was just making sure.

3 COMMISSIONER HARDECKE: Did you say that you do have silt fence in place?

4 MR. COLLIER: Yes sir, yes. And, my project managers might be
5 able to speak on the time frame better. But, I think part of the problem was on
6 one of the projects when they came out when we were clearing and some of the
7 silt fence running through the middle of the property and so forth wasn't up
8 because of the clearing process that was going down, but as far as parameter
9 siltation that was -- that was all up according to the plan that we had
10 submitted.

11 COMMISSIONER PERRY: Sure. But, how else, you know I'm thinking that I
12 have seen this. And, I saw a very large area of disturbed ground with a lot of
13 dirt running in a lot of places.

14 MR. COLLIER: Yes, ma'am the Hamptons is a big area that's been
15 a, that's the one on 61 does that sound right?

16 COMMISSIONER PERRY: And, the comment was made to me when I drove by.
17 Aren't you on the water commission and shouldn't you all be doing something about
18 this?

19 MR. COLLIER: Well, and again we've had DNR out several times
20 and I think some of those guys are here today, but we don't have any run-off
21 coming off the site since the original back in, I believe it was February. We
22 had a complaint and we had some minor siltation run-off to the back rear of the
23 property and since then we have corrected that, and haven't had any run-off
24 since. So in part -- just to give you some background on that we were currently
25 working with one city and they ended up not being able to take us so now were --

1 we should have that approved, I'm actually going to Troy tonight to get approval
2 on that project. So that project will be -- will be going forward here in the
3 next month.

4 COMMISSIONER TUPPER: But, you did indicate there was a violation in the
5 beginning?

6 MR. COLLIER: In, I believe, I could ask my property or project
7 manager, but I believe it was in February there was one -- there was a violation
8 and we took care of it since then.

9 CHAIRMAN HERRMANN: It is either Joe Stetzel or --

10 MR. COLLIER: Those are the two project managers, yeah. Do you
11 have questions for them?

12 CHAIRMAN HERRMANN: Do have any to add to your --

13 MR. STETZEL: My name is John Stetzel. Anna Meadows in
14 particular was interesting site, it had a field off to the east side of it and a
15 grassy field off to the west side, all the water came to the center of the site
16 to two existing ponds. What we had done was drain the ponds down partially and
17 our intention was to use those ponds as sediment basins, they were fairly good
18 size probably two acres or so in size at least, and that was acting as our
19 erosion control at that site during the clearing process. And, out there
20 looking at the site just actually yesterday just to check and see what the
21 erosion was that came off the site, I don't see anything that was ever -- that
22 had ever ran off the site to even cause a problem. I think the complaint came
23 solely from somebody driving by, possibly one of our competitors, you know
24 stating we didn't have anything done and I think if they would have reviewed the
25 site and realized that it was unique they -- they could have realized that the

1 erosion coming off the site wasn't a problem. As for Hamptons, it is a large
2 site, it's eighty acres or so, we have thousands of feet of silt fence on the
3 site, parameter fencing, there's three permanent detentions basins that are on
4 the site that were at two of the major outfalls. Other areas we've added silt
5 basins in and -- and I've got a stack of invoices to show the silt fencing, the
6 maintenance that has been done on those sites to try to protect the out falls.
7 So I feel like that we've made an honest effort to try to keep the silt on site,
8 it's just that it's a very large site. Like I said I've got a stack of invoices
9 to show that we've tried to honestly do something with that site. That's all
10 I've got to say.

11 CHAIRMAN HERRMANN: Thank you. Kevin, do you wish to add anything to
12 these comments?

13 MR. MOHAMMADI: Yes, Mr. Chairman I believe Mr. Collier actually
14 made the point that there was a sediment run-off from this site. The company
15 have been through this process in the past. In 2001 they had violation on
16 different site, we went through enforcement process, we settled the case and
17 they agreed that in future development they are going to make sure they are
18 going to comply with the law, and they were going to do things right. And,
19 evidently they have not done that, that's why we are before you and we are
20 asking the matter to be referred to office of attorney general office.

21 COMMISSIONER EASLEY: Well, Kevin I'm confused. You're wanting to refer
22 them, but then the other party claims that they have corrected all these
23 deficiencies. Are you disclaiming that?

24 MR. MOHAMMADI: No. What's -- the violation occurred at the site.
25 The sediments ran off from the site and into -- into a stream as matter of fact

1 as of July 6th, 2006 the staff from St. Louis Regional Office conducted inspection
2 and still there was sediment in the receiving stream on Hampton site. So what
3 we're saying is commissioner they do not do things properly, there is a
4 violation, there is a water quality impact. And then when we show up and say you
5 have a problem they say okay we will fix it. That's not the way it's supposed
6 to work. This is supposed -- the purpose of permit is to prevent it from
7 happening in first place rather than your scheduled permit let sediment run off,
8 do not install proper BMP and let sediment run off the site and then DNR comes
9 in and says you have violation and says okay well we'll fix it.

10 COMMISSIONER EASLEY: So your basically now asking for payment for that
11 cost of -- of damages and several penalties, and is that what you are basically
12 --

13 MR. MOHAMMADI: Yes, we are seeking penalty.

14 COMMISSIONER EASLEY: And, you have negotiated those?

15 MR. MOHAMMADI: No, we have not conveyed with them because we felt
16 they went through the process once and now we need to escalate it the situation
17 maybe we get a consent ordered in court that way if they violate terms of that
18 order then we can go to the court not to come before this commission.

19 CHAIRMAN HERRMANN: Your suggestion is to file civil action. I would
20 have to ask Mr. Bryan if we make a referral is that still get to the point of
21 the question as the Attorney General's Office is going to conduct. Negotiations
22 are hearings, correct?

23 MR. BRYAN: We -- we typically contact the -- the company and
24 make an effort to resolve it before filing. We do that in consultation with Mr.
25 Mohammadi that -- I don't know that would be any different here, but the point

1 that Kevin makes about escalating the enforcement to a court order is -- that --
2 that is true that's what we would attempt to do. We would attempt to negotiate
3 a resolution that would be embodied in a court order rather than in a settlement
4 agreement. So that there would be an added incentive for the company to comply
5 in the future when the settlement agreement, dealt with the first violation,
6 there has been a subsequent alleged violation, we would escalate that
7 enforcement to resolve that case in front of the court. But, that doesn't mean
8 that when we get this referral we will automatically file a lawsuit without
9 communicating with the company first and trying to resolve it.

10 COMMISSIONER PERRY: That seems to be what's different in this request
11 over the ones we've had in the past. Usually, we just refer it to the AG's
12 office for further action on their part. This one was more specific like.

13 MR. MOHAMMADI: That is correct.

14 COMMISSIONER PERRY: But, wouldn't also if we just referred it to the AG's
15 office you would be able to make that suggestion. But, I am a little worried
16 about starting to -- for us to direct the Attorney General's Office with how
17 they should proceed legally.

18 MR. MOHAMMADI: We are not -- we are not asking you to be specific
19 like Mr. Bryan has stated it. They will contact the company once they receive
20 the case and how we are going to materialize or memorialize the terms of that
21 agreement and what document that is going to be discussed between DNR and
22 Attorney General's Office.

23 CHAIRMAN HERRMANN: And, we do that by referral?

24 MR. BRYAN: Yes.

25 CHAIRMAN HERRMANN: So instead directing the Attorney General to -- to

1 file civil action a referral to the Attorney General's Office would accomplish
2 the same thing.

3 MR. MOHAMMADI: Yes, indeed.

4 CHAIRMAN HERRMANN: Okay.

5 MR. GALBRAITH: We provide suggested motion language but it's
6 obviously at the commissions discretion instead of saying institute civil action
7 you could say institute appropriate action or something more, with more leeway.

8 CHAIRMAN HERRMANN: How might we say we refer it to the Attorney
9 General's Office for action.

10 COMMISSIONER HARDECKE: I've got a question, Kevin. In here you state there
11 is approximately thirty-nine acres disturbed with no sedimentation control
12 structures in place and the representative of the company stated that they did
13 have sediment controlled structures in place, so

14 MR. MOHAMMADI: That was after the fact. After we inspected
15 the facility and then they received notice of violation and inspection report
16 then they installed sediment fences.

17 COMMISSIONER HARDECKE: I understood them to say that they were in place
18 before that.

19 MR. MOHAMMADI: We have the inspector who really inspected this
20 site Paul Mueller. Paul.

21 MR. MUELLER: The Anna Meadows site in February was -- two ponds
22 were present that had been drained, the berms had been cut there was a small
23 amount of standing water in those ponds. Those ponds were not listed in their
24 stormwater pollution prevention plan as part of the erosion control. Those
25 ponds did not have controlled outfall structures so I did not consider them an

1 adequate sedimentation basin at that time. We had earth moving next to the
2 creek, we didn't have any fence up to prevent sediment from falling down into
3 the creek, along the creek and I did have sediment in the wet weather tributary
4 that was flowing to Big Creek at that time.

5 COMMISSIONER TUPPER: This property would have to be cone shaped for a silt
6 pond to work totally, would it not?

7 MR. MUELLER: It's got some ravines in it kind of flowed down in
8 a "Y" the ponds were on either side of the top of the "Y" and since then they
9 have put a small basin in towards the bottom of the "Y" just before it flows
10 into Big Creek.

11 COMMISSIONER PERRY: Were the ponds working?

12 MR. MUELLER: I didn't feel they were adequate. They didn't
13 cover the whole site and there was too much flow through them without a
14 controlled structure to control the amount of flow leaving site.

15 COMMISSIONER PERRY: I think I just want to make a comment here. Not so
16 much on what my action is that I'm going to take but it seems to me when you
17 review a site that it should be reviewed in terms whether it is actually
18 stopping erosion or not, and whether or not something was placed on a form keeps
19 it from being considered should not be your primary consideration. Our primary
20 consideration is are we keeping the silt out of the waters of the state. And,
21 if something that they never wrote down is working then it's working.

22 MR. MUELLER: Yeah, I agree with you that -- completely because we do tell
23 them that if they change their stormwater pollution prevention plan they can
24 change in field and can write that on the plans. That's completely acceptable
25 But there still wasn't enough stuff in place to hold the sediment on site.

1 CHAIRMAN HERRMANN: You said that the berms were breached and there
2 was no flow control --

3 MR. MUELLER: Right. There were previous farm ponds and they
4 had went in and excavated the berms and drained them down.

5 CHAIRMAN HERRMANN: Okay.

6 MR. MUELLER: We have no figures to show us how much that was --
7 those basins were actually holding or capable of holding, and we do have
8 specific volumes that we ask them to have their sediment basins hold.

9 CHAIRMAN HERRMANN: All of these things would evidentiary.

10 COMMISSIONER HARDECKE: So in -- in a -- in a normal plan would those
11 sediment basins have been an acceptable structure.

12 MR. MUELLER: They lacked erosion control prevention on the
13 outfall structures and we have had no calculations submitted to us on the volume
14 of what was left to those existing old ponds. There was -- I felt they were
15 just very small. They'd been excavated in the berm, so the berm was probably
16 ten-foot excavation with the overflow going out so there wasn't a controlled
17 discharge from those old ponds.

18 COMMISSIONER HARDECKE: Okay, so what would the method of choice have been
19 to prevent that silt from leaving the site?

20 MR. MUELLER: We try to encourage new sediment basins to be used
21 as soon as possible or if you have old ponds if you want to use them to leave the
22 berms in tact for as long as possible, do some other excavation, get the new
23 basins put into place. We've got books full of stuff that they can do for
24 trying different things. One specific thing doesn't work for every site it's
25 usually lots of different things that vary for each site.

1 COMMISSIONER PERRY: But, did you observe silt actually leaving the site?

2 MR. MUELLER: Yes, I saw silt (inaudible) in Big Creek.

3 MR. BRYAN: Mr. Mueller do you have any photographs from your
4 inspection with you today?

5 MR. MUELLER: Yes, I do.

6 MR. BRYAN: It might help if you share those with the
7 commission they can see what you observed that day.

8 COMMISSIONER HARDECKE: So is -- in that situation is a silt fence all it's
9 required or do you require those sediment basins?

10 MR. MUELLER: The permit states that if there is more than one
11 or more than ten acres of disturbed land in the watershed we do require a
12 basin. So we're looking a basin or several basins to make up the volume.
13 EPA's recommendation is 3600 cubic feet for every acre of disturbed land. So we
14 are looking for the -- the volume along those lines to handle the flow up
15 stream.

16 MR. GALBRAITH: I noticed you had photographs of the Anna Meadows.
17 Do you also have photographs of the other site?

18 COMMISSIONER PERRY: Hamptons.

19 MR. MUELLER: Yes.

20 CHAIRMAN HERRMANN: Thank you.

21 MR. MUELLER: The Hamptons was actually written up in
22 correspondence have been from another inspector John Bagley. He was in training
23 and I was working with him, but I let him do the write up on inspections and he
24 working with them on the Hamptons. We did re-inspect the Hamptons last Thursday
25 and we re-inspected Anna Meadows the week before that. Anna Meadows has a lot

1 of improvements on it, has a little work to do. The Hamptons we did find
2 sediment off of site even last Thursday yet. We had sediment in the road
3 culverts, and that was one of our original complaints from Department of
4 Transportation. Local people contacted me that they were having too much mud
5 sediment in their road culverts. And, the other complaint was from the highway
6 -- from the Troy Police Department, they had to close a road off because of the
7 amount of water and mud going over one of their roads coming off the Hamptons.

8 COMMISSIONER HARDECKE: A while ago you stated that you'd like to have a new
9 sediment control basin instead of using an old one. I am trying to understand
10 why that would be better than --

11 MR. MUELLER: Their intention was to fill the area where the
12 ponds were at. They're cutting and filling the area. So they want to drain the
13 basin so they can get that area filled. I would like to see them use those as
14 basins until they get the other structures in place down stream that are going
15 to be the permanent structures. Then they can go back and drain and fill that
16 area after they have other controls in place.

17 COMMISSIONER HARDECKE: It seems like a current structure would probably
18 have as much or more stability then new structure, which should be as adequate.

19 MR. MUELLER: If they would have been left in tact with their
20 outfall structures on it those would have worked very well for containing
21 sediment until they've got other stuff in place, while they were doing work up
22 stream of it.

23 CHAIRMAN HERRMANN: You have to add the capability of retaining or
24 detaining the quantity of flow anticipated.

25 MR. MUELLER: Right.

1 MR. GALBRAITH: So you're saying they were -- they had cut the
2 berms on those existing ones.

3 MR. MUELLER: Yes, the berms had been cut and the volume of them
4 was unknown. There is quite a bit of watershed up stream of both of those
5 ponds both on their site and quite a bit -- actually more off their site. So
6 the amount of water flowing through the remaining ponds there was not enough
7 detention time to allow for settling.

8 CHAIRMAN HERRMANN: Big Creek in that area is a sizable stream is
9 it not?

10 MR. MUELLER: Yes it is.

11 CHAIRMAN HERRMANN: Yes. Okay. Any other questions? Yes, sir.

12 MR. COLLIER: I would just like to make a comment that we never did
13 receive violation on Anna Meadows. My staff met on site with Mr. Mueller and
14 asked him about even going down to the creek and he stated that it wouldn't be
15 necessary that it looked fine. So I don't know where these pictures are coming
16 from, but we even went down there yesterday after it rained and there was
17 nothing down there, no silt nothing. The police comment and all that was back
18 in February when the residents called and as I told you yes silt did go across
19 the street. But, since then we haven't had any, and it just feels like we're
20 trying to -- we're trying to work with them and meet on site with them, we've
21 corrected the list of corrections they gave us, but yet they are trying to make
22 us out to be the bad guys like we are not doing anything. There's no silt fence
23 and were just letting mud and silt run off into the creeks and that's not true.
24 We've addressed all the comments on their list and corrected all that.

25 CHAIRMAN HERRMANN: Mr. Stezel said you have invoices for the silt

1 fence and other things, and I think all this would be evidentiary with --

2 MR. COLLIER: Yes, sir. We've also got pictures of the creek too.

3 CHAIRMAN HERRMANN: It would be evidentiary information for the
4 hearing with the Attorney General's Office. So rather than file civil action I
5 would suggest that we refer it to the Attorney General's Office for mediation or
6 negotiation or whatever you call it.

7 MR. BRYAN: Just for appropriate action.

8 COMMISSIONER PERRY: Mr. Chairman I would like to suggest that we put it
9 for appropriate action rather dictate to the Attorney General what sort of --

10 CHAIRMAN HERRMANN: Right.

11 MR. COLLIER: If the violations have been corrected though
12 what are we going to mediate?

13 COMMISSIONER PERRY: They would -- they -- and I think that's where we are
14 having a little misunderstanding that things get referred for violation. We
15 want you to mediate them and that should effect what sort of action is taken
16 over the violation in the first place. But, that would be something that would
17 be decided either through a settlement action or through a court action based on
18 the evidence. And -- and, that's why we would be willing to refer that not to
19 say that we don't appreciate the fact that you have mediated what was wrong.

20 MR. COLLIER: Okay.

21 CHAIRMAN HERRMANN: The reason for a referral is the Attorney General
22 to hear your side of the story as well as the states.

23 MR. COLLIER: Okay.

24 CHAIRMAN HERRMANN: And, they will make a decision as to what's
25 appropriate, and where to go from there.

1 MR. COLLIER: Okay. Thank you for your time.

2 CHAIRMAN HERRMANN: Thank you. Tab #17.

3 MR. GALBRAITH: Is there a motion?

4 CHAIRMAN HERRMANN: Oh, I'm sorry we do need a motion. Ms. Perry you
5 suggested a motion.

6 COMMISSIONER PERRY: Is it that time? Oh, I'm sorry (laughter) I thought
7 the motion had already been made has it not. **I move that we refer this matter**
8 **to the Attorney General's Office for appropriate action.**

9 COMMISSIONER KELLY: Second the motion.

10 CHAIRMAN HERRMANN: Moved and seconded please call for the vote,
11 Malinda.

12 MS. OVERHOFF: Commissioner Hardecke?

13 COMMISSIONER HARDECKE: Abstained.

14 MS. OVERHOFF: Commissioner Kelly?

15 COMMISSIONER KELLY: Yes.

16 MS. OVERHOFF: Commissioner Tupper?

17 COMMISSIONER TUPPER: Yes.

18 MS. OVERHOFF: Commissioner Perry?

19 COMMISSIONER PERRY: Yes.

20 MS. OVERHOFF: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. OVERHOFF: Chairman Herrmann?

23 CHAIRMAN HERRMANN: Yes.

24 CHAIRMAN HERRMANN: Well, I just made a note for myself was the EPA's
25 recommendation 3600 cubic feet per acre of disturbed ground.

1 MR. MUELLER: Yes.

2 CHAIRMAN HERRMANN: That's okay.

3 MR. MUELLER: We have a two-year (inaudible) recommendation for the
4 3600 feet -- cubic feet it is easier with for people (inaudible).

5 CHAIRMAN HERRMANN: Yeah, yeah, okay. I just wanted to make sure that
6 my note was correct for my fading memory.

7 MR. MOHAMMADI: Mr. Chairman the next **Item is Buford Foster** in
8 December 2005 Mr. Buford Foster's houseboat sank at his marina on Lake of the
9 Ozark resulting in a release of diesel fuel to the lake. Mr. Foster has stated
10 in a letter to the department that he will not negotiate with the department and
11 unwilling to resolve past violations of Missouri Clean Water Law. Staff
12 recommends the matters to be referred to the office of Attorney General Office
13 for applicable legal action.

14 CHAIRMAN HERRMANN: Okay, we have Mr. Buford Foster here.

15 MR. FOSTER: Yeah here did you call my name?

16 CHAIRMAN. HERRMANN: Yes, sir.

17 MR. FOSTER: Okay, my name is Buford Foster you're looking at
18 the granddaddy of the Lake of the Ozarks. I don't want to bore you, but I
19 would like to give you two hours of -- of history and were not going to do that.
20 But, this is concerned of -- in December -- you see I have done an awful lot
21 for the promotion of the Lake of the Ozarks. There is a list of about twenty
22 things here that I have done in promotion of Lake of the Ozarks and one of the
23 big things that we did with the Lake of the Ozarks is Ralph Foster in
24 Springfield, MO is my cousin and he put in the first radio station in
25 Springfield. Him and John Jones and Green put together the first television

1 station and at that time I was real busy still trying to promote the Lake of the
2 Ozarks because the first five years after the Lake of the Ozarks was formed this
3 was starvation country, I tell you. The roads were not all paved yet and
4 tourism -- and the tourism was not hardly anything and development was nothing
5 and we were starving. So we had to do something to try to bring people here to
6 the Lake of the Ozarks. Now going back a little farther in 1924 our family
7 moved to Old Linn Creek which is forty feet under water now. And, in 1927 two
8 well-dressed fellows came in and one of them said my name is Lewis Eagon and my
9 buddy here is Frank Bame we're are president and the vice-president of the Union
10 Electric Land Development Company and we would like to rent your restaurant for
11 next Sunday afternoon to make an announcement to all these counties, and all the
12 newspapers that we're are taking over to build the Bagnell Dam and we'll pay you
13 twenty dollars. Well, oh pop says well sure that's fine. You know, twenty
14 bucks in 1927 was pretty big. So they made the announcement but nobody believed
15 it and we all tried to stop and everything but it didn't work. But, Lewis Eagon
16 and Frank Bame as Harry Truman would say they were crooked sons of beaches.
17 Noticed to how I spelled that so it would not be dirty. Well, old Harry was a
18 great guy a wonderful guy. Now, the many things that I have done here that was
19 one thing. Oh, back to Ralph and -- and them. Ralph would come down see my
20 wife and I had acquired the (inaudible) Hawk Restaurant in 1945 and we built
21 that up and made it into the best restaurant there was between Jefferson City
22 and Wichita, Kansas and we caught all the big papa political people and
23 everybody liked that, that came through. Well, Ralph would come down and we'd
24 go fishing in Ha Ha Tonka quite often, but one day he came down and he says
25 -- he knew that I had put together a square dancers that were becoming

1 nationally known and so he said let's do something that had never been done
2 before. I said what's that. He said let's put together a nationwide country
3 music show. A friend of mine's coming down next week and I'll bring him down
4 and let's talk about it. His name is Red Foley, and he brought him down. We
5 talked and visited with him we didn't do any fishing, but we decided we do it.
6 So we made this -- put this together and we called it the Ozark Jubilee and we
7 ran it seven years and believe me people we put the Ozarks on the map. That's
8 one of a few little things we've done. Again, getting back to this water --
9 clean water. We lived in Old Linn Creek that's where the Osage and Niangua come
10 together. And, I may seem a little unstable but I'm 87 years old guys and I'm a
11 handicapped person you can't tell by looking at me but I only got one ear and
12 one eye. I had my head mashed in when I fell off a cliff in a pile of rocks and
13 the military would never have me because of. But, I tried them all. But, now
14 that Osage River was always muddy and so when they built the -- the -- the
15 casing or dam later named Truman Dam that water was still muddy. And, that Lake
16 of the Ozarks would not clear up until late July or 1st of August and driftwood
17 would be tons of it and tons of it. So finally when they built that dam that
18 made the difference and that really helped our Lake of the Ozarks. Now, 1954 I
19 bought -- I bought from Dr. Stein who was dying, three miles of lakeshore on the
20 Niangua where the 54 went through it, the bridge. He was a wonderful fellow.
21 And, we didn't start developing it for the next year and we turned it into one
22 of the most desirable places that people want to come to in the United States.
23 There is just a glimpse of what -- what I've built there. It was the best on
24 the Lake of the Ozarks for many years. Has everything from soup to nuts there,
25 until 1998 when the blizzard put us clear out of business. Now, on that -- when

1 I bought that property the taxes to the county was \$172.00 after all of the work
2 and the development that my good wife and I have done there, last December I
3 went up to see about the taxes, it didn't all come from my pocket it came from
4 the development. From the development that I had put there that they collected
5 \$38,000.00 and that is just a drop in the bucket that goes on. Me being a very
6 productive person I become a target for DNR and they have attacked me every way
7 in the world. And, I will tell you a little bit of that and we'll get off of
8 it. But, they hired to many --

9 CHAIRMAN HERRMANN: Mr. Buford or Mr. Foster.

10 MR. FOSTER: Sure.

11 CHAIRMAN HERRMANN: I appreciate the history lesson more than anybody
12 else because I'm -- I'm -- I'm -- I'm near your age and I can -- I can
13 appreciate it. I bought my house that I live in 1968 my taxes last year, for
14 the year were more than my annual payment for my house in 1968. So I can
15 appreciate your -- but everything's gone up. But, we are here to discuss your
16 houseboat that sank and the effect that it had on the lake.

17 MR. FOSTER: Me being very productive and we have brought it
18 from -- when we sent those guys to prison they declared all the hills and shores
19 as wasteland and to get rid off it as fast as could to keep from paying taxes
20 to the counties. And so they gave twenty thousand acres of it to the state,
21 which become a state park. And of course it was wasteland then so after that
22 was going on we decided that we had better do something because we're starving
23 to death. So we started advertising and promoting to bring people here and it
24 has worked. My friends believe me we have caused this to turn into a
25 multi-billion dollar facility and I want you to know darn well that I sure done

1 my part of it. I am 87 now. And, I've done a lot of it. Now, I had the marina
2 there and we did well until the break down and so forth. And, we moved a lot of
3 it around in the cove there and we started developing into condominiums. Now,
4 the boat that I had left there, -- the best one that I had was a 60' foot
5 fiberglass with big diesel engines in it passenger boat. The people up and down
6 the Niangua, not all of them, they hate me because I've been a promoter to bring
7 the Lake up to what it is today. They did all the harm they could to me. They
8 slipped in there and they took the pumps out of this big boat and they cut the
9 water -- the engine intake line and the wife and I looked down there the next
10 morning and there it was sitting on the bottom four feet of water. The filler
11 was just about that far under the water, and had about three or four gallons of
12 diesel in it. You know, diesel doesn't evaporate like gasoline and but three,
13 four gallons will go along ways until it finally drifts to the shore and soaks
14 up into driftwood and that sort of thing. And so, water patrol was notified.
15 They called everybody that they could think of. They poured in there with --
16 making projects of every way in the world. Finally, one of the DNR guys came
17 in, his name was, I can't recall it right now. Gilbert, no, anyway he said,
18 you need help, don't you. I said yes I do. I'm needing help. And so, he said
19 lets go call Springfield we will call that company that cleans up stuff you know
20 and they came down full force and they did a good job. There wasn't much diesel
21 out there. We put floating things around it to house it and so forth, but they
22 charge an awful lot of money and I'll tell you it hurt, it hurt bad. Now, on

(End of Tape 2 Side A)

23 the -- on the manifolds and they caused it to sink again but I had moved it up
24 were it wasn't so deep and all we had to do is pump it out then and nobody had
25 to come and clean up or nothing after. That's what's happened. Now, it makes

1 you wonder does the people of DNR or anybody appreciate you spend your life to
2 try to make a better place for us all to live, you wonder. What on earth is
3 this about. Now, I am not begging for sympathy, I have done my part. Now,
4 being back to DNR I want to tell you the bad one that they hit us with. In 1998
5 we had a snow storm, blizzard that broke down four of our six big docks, sank
6 eighty-three boats, and nothing was done about anything so DNR. But, the burden
7 was on us for Anna Mae and I. Who she's at home in Alzheimer's now. We --
8 nothing was done about it, but I was notified by the DNR that it is my burden to
9 get all the boats out of it and get all the docks out of. The docks were steel
10 with wood walkways. And, so we spent the next six months getting that all out.
11 We got to go to the bank borrow a lot of money to get this all done, and we got
12 it done. Then we piled all the walkways out on the shore to let them dry, now
13 in those early days DNR did not put out much information. We didn't know it was
14 against the law to burn up trash lumber, we didn't know that. So when it got
15 dry we burned it. The next day DNR was there and it looked like an Easter egg
16 hunt. There was about ten of them and it was pitiful what they did. They went
17 through and then they said we're going to put a big fine on you for that. Well,
18 I said let's have a hearing so we had -- had a hearing here in Jefferson City.
19 The head of the DNR part right at that time was a beautiful lady and just as the
20 meeting was about to start she got up and said I have a previous engagement and
21 she left, I will leave it to Mr. Crocker. Well, after she got gone we opened
22 the meeting and Mr. Crocker turned to me and he said I'll bet your sewers are in
23 terrible condition aren't they. I said, no. We did what the DNR recommended we
24 got a dragline in and we dipped out and made a sewer lagoon. Which was legal in
25 those days and recommended, and we did that. He said, we're going to fine you

1 anyway. Well, I said not to much because we've about lost everything we got
2 now. Well, okay we're going to fine you \$18,000.00. I said man that's
3 ridiculous. Yeah, he said we know your sewers are terrible. And, I got up and
4 I was going to punch him in the nose. My son, and my wife pulled me down and
5 said don't you do a thing. Well, I didn't. Okay, I didn't and so my daughter
6 was president of school board in Camdenton at that time and I said well rather
7 that to go ahead and have a law suit over it and then we will just go ahead and
8 write a check for the \$18,000.00 to our school which we did. Quickly, I will
9 get this over with. I was there for their first graduation in Camdenton, seven
10 people. Last year -- last year the graduation there, I had three grandchildren
11 there, they graduated three hundred thirty-four and now we are building a
12 seventeen million dollar additional building on there. That's just a little bit
13 of what's going on around this lake. And, what we've done here is dropping the
14 bucket, I tell you. There is nearly two hundred condominium projects on the
15 Lake of the Ozarks now. And, we do have (inaudible) planning and zoning. And,
16 it you want to know all the facts there are three hundred and thirty pages that
17 I have written about the history of all it. But, we have sold over three
18 thousand of these books now. I just brought it along to tease you with it a
19 little bit.

20 COMMISSIONER PERRY: Mr. Foster may I ask you a question? May I ask a
21 question? May I ask a question? Can you hear me? You seem to imply that --

22 MR. FOSTER: A little bit close I don't hear good.

23 COMMISSIONER PERRY: It was my understanding that someone else sunk your
24 boat?

25 MR. FOSTER: Yes.

1 COMMISSIONER PERRY: And, did you file a police report? Did you file a
2 report of -- police report?

3 MR. FOSTER: Oh, yes with the sheriff and the water patrol
4 both.

5 COMMISSIONER PERRY: Have you taken any action against them?

6 MR. FOSTER: They haven't come up with anything yet. But, I
7 know pretty well who they are. There are some people hate me because I have
8 helped so much to bring the Lake of the Ozarks up from (inaudible) from Chicago
9 and buy a house and keep it all for themselves. See, that's -- that's what has
10 gone on.

11 COMMISSIONER PERRY: Did your insurance help -- did your insurance help
12 with the cost of the clean up?

13 MR. FOSTER: No, not a dime. We just had to make the best we
14 could. I am sorry to take up your time, but I will answer any questions I can.
15 I don't want to bore you with anything (inaudible).

16 MR. GALBRAITH: He needs to speak in the microphone.

17 If you would please stay at the microphone. We will
18 try to speak up but if your not at the microphone then we can't capture all of
19 the -- for the minutes of the meeting. I appreciate that, thank you.

20 CHAIRMAN HERRMANN: All right, the subject at hand is -- is -- the
21 subject at hand is that the boat sunk and caused a discharge into the lake.
22 Now, all of your background information, I think may be of interest to the
23 Attorney General in a hearing. And, I would suggest that we do that and
24 clarify. If you didn't know that the burning wood was illegal. I might counter
25 that I've passed through Linn Creek and gotten a traffic ticket because I didn't

1 know that it was illegal to drive that fast. So the same thing applies.

2 COMMISSIONER PERRY: Were you over twenty-five? (laughter).

3 CHAIRMAN HERRMANN: Yeah.

4 MR. FOSTER: I'm sorry I didn't hear what you said.

5 CHAIRMAN HERRMANN: I said that I drove through Linn Creek and I
6 violated their speed limit and I got a traffic ticket. So the same thing
7 applies. So I think -- what -- you get in -- all of your information together
8 and if we refer this to the Attorney General's office and you can tell the
9 Attorney General's Office all of your circumstances and we'll let them decide.

10 MR. FOSTER: Yes. I'll get all that and send it to the
11 Attorney Generals' Office.

12 CHAIRMAN HERRMANN: Well, wait to you hear from them.

13 MR. FOSTER: And, I've got some stuff here that I would like to
14 show you, quickly.

15 CHAIRMAN HERRMANN: Okay, I appreciate it. Thank you, sir. Should we
16 have a motion of referral to the Attorney General's Office for Mr. Buford
17 Foster.

18 COMMISSIONER EASLEY: I move that we refer to the Attorney General's Office
19 for appropriate action.

20 COMMISSIONER TUPPER: Second.

21 CHAIRMAN HERRMANN: Moved and seconded please call for the vote,
22 Malinda.

23 MS. OVERHOFF: Commissioner Kelly?

24 COMMISSIONER. KELLY: Yes.

25 MS. OVERHOFF: Commissioner Tupper?

1 COMMISSIONER TUPPER: Yes.

2 MS. OVERHOFF: Commissioner Perry?

3 COMMISSIONER PERRY: Yes.

4 MS. OVERHOFF: Commissioner Easley?

5 COMMISSIONER EASLEY: Yes.

6 MS. OVERHOFF: Commissioner Hardecke?

7 COMMISSIONER HARDECKE: Yes.

8 MS. OVERHOFF: Chairman Herrmann?

9 CHAIRMAN HERRMANN: Yes. Thank you Mr. Buford.

10 MR. FOSTER: (Inaudible) people think of me. And, I appreciate
11 it very much. I've helped put together the Chamber of Commerce at the Lake of
12 the Ozarks Association. I've been voted president of the Ozark Lakes
13 Association that stopped the big power companies from pumping back up over the
14 dam like this Taum Sauk thing. That was a good plan, but I knew it would not
15 work, and I filed everything I could to stop it. So when they had the big trial
16 the had six of those big pumps there that were generators that could reverse
17 their pumps back up. That was a good plan but my god what are the going to do
18 to us. And so, I had everybody there when they had the run the test to turn on
19 two of them (inaudible) and whenever they turned them two on there was guts, and
20 feathers, and scales, and dead fish that they just pumped the upper lake full of
21 fish. It was terrible and course (inaudible) tried to put a fence around
22 (inaudible) it wouldn't work. I know they meant so well and it was a good idea.
23 So was the Taum Sauk you heard about it. I am sorry to take up all you time.

24 CHAIRMAN HERRMANN: Thank you, sir.

25 MR. FOSTER: I applaud you for listening to me. One other

1 thing I wanted to say, please you guys try help us get legislature to allow our
2 DNR to use our money for better purposes, just like I have provided in my
3 operation four of the big sewer disposing systems. The last one was in the
4 county and we got a four million dollar grant and it is finished now. And, I
5 provided the land for them to put it on. And, it's beautiful and it's working
6 good. Guys we got to get the Lake of the Ozarks, keep it cleaner because people
7 are pouring in here like everything and we don't want them pooping in the lake,
8 do we? No.

9 COMMISSIONER PERRY: Or diesels.

10 MR. FOSTER: I am all for cleaning every way we can guys.

11 CHAIRMAN HERRMANN: Okay, thank you, sir.

12 MR. BRYAN: Can I ask Mr. Mohammadi a question about this case?

13 There are some environmental emergency response
14 costs, I assume in here.

15 MR. MOHAMMADI: Yes.

16 MR. BRYAN: Do you know if the environmental emergency response
17 unit has evaluated this under the Oil Pollution Act?

18 MR. MOHAMMADI: I don't think so. I don't think they have.

19 MR. BRYAN: Our office will go that. The Oil Pollution Act
20 allows -- is a Federal claim pool that is set up, that allows for recovery of
21 costs incurred in responding to oil pollution emergencies. This might provide a
22 creative way to compensate the state's citizens for the cost incurred in
23 responding to this environmental emergency. At the same time simplify the
24 resolution of this legal dispute, and we'll take a look at that and see if it
25 applies here.

1 COMMISSIONER PERRY: I appreciate your insight.

2 CHAIRMAN HERRMANN: Thank you.

3 MR. MOHAMMADI: Mr. Chairman next matter is **Clear Cove Landing**
4 **subdivision.**

5 CHAIRMAN HERRMANN: Did we vote?

6 MR. GALBRAITH: Yes we did.

7 CHAIRMAN HERRMANN: Okay. Go ahead, sorry.

8 MR. MOHAMMADI: Assured Properties LLC owns and operates a
9 wastewater treatment facility that treats wastewater generated from the Clear
10 Cove Landing subdivision. Effluent from the wastewater treatment facility
11 discharges to Table Rock Lake, pursuant to the limitation and requirement of
12 Missouri state operating permit. In accordance with Missouri Clean Water Law,
13 Assured is required to pay eight hundred dollars annually for operating permits.
14 Staffs in four notes invoice says to Assured contacted the representative by
15 phone requesting payment of the fee. Today payment has not been received.

16 Staff recommends the matters referred to the office of Attorney General Office.
17 CHAIRMAN HERRMANN: Anyone present from Assured Properties? Any
18 questions to Mr. Mohammadi? **Hearing none, chair would entertain a motion for**
19 **referral.**

20 COMMISSIONER KELLY: So move.

21 COMMISSIONER TUPPER: Second.

22 HERRMANN HERRMANN: Moved and seconded. Please call for the vote,
23 Malinda.

24 MS. OVERHOFF: Commissioner Tupper?

25 COMMISSIONER TUPPER: Yes.

1 MS. OVERHOFF: Commissioner Perry?
2 COMMISSIONER PERRY: Yes.
3 MS. OVERHOFF: Commissioner Easley?
4 COMMISSIONER EASLEY: Yes.
5 MS. OVERHOFF: Commission Hardecke?
6 COMMISSIONER HARDECKE: Yes.
7 MS. OVERHOFF: Commission Kelly?
8 COMMISSIONER KELLY: Yes.
9 MS. OVERHOFF: Chairman Herrmann?
10 CHAIRMAN HERRMANN: Yes.
11 MR. MOHAMMADI: Next matter, Mr. Chairman is **Missouri American**
12 **Water Company** we have reached a tentative agreement with them, therefore staff
13 recommends matters to be tabled.
14 COMMISSIONER PERRY: Okay, so it's just like you didn't bring it to us?
15 MR. MOHAMMADI: That's correct.
16 COMMISSIONER PERRY: So skip that.
17 CHAIRMAN HERRMANN: It's still under negotiation and discussion.
18 MR. MOHAMMADI: We -- yes we have reached a tentative agreement
19 that we hope to finalize it pretty soon.
20 CHAIRMAN HERRMANN: Excuse me. That ends the enforcement actions.
21 Refaat we might as well go on with the permit backlog and water quality review
22 update.
23 MR. MEFRAKIS: Okay, the permit report begins on Page 26 at 265.
24 What we've done is we tried to simplify -- we've been trying to simplify the
25 permit reports and we've divided the operating permits into two categories. One

1 is permit not requiring public notice, which the time frame for that in
2 sixty-days. An example for that would be like general permits. The other
3 category with the operating permit is permits requiring public notice and those;
4 statutory time frame is one hundred and eighty days. Examples of that are
5 site-specific permits. That you see so for the purpose of making things simple,
6 and then we have a category here, which is -- gives you an idea of how many
7 construction permits we issue.

8 COMMISSIONER PERRY: What is your time line on the construction
9 permits?

10 MR. MEFRAKIS: One hundred and eighty days. Six months, right
11 they all require public notice.

12 COMMISSIONER PERRY: And what is the public notice?

13 MR. MEFRAKIS: Thirty days.

14 COMMISSIONER PERRY: So, okay that moves you down to five months
15 sitting in your office.

16 MR. MEFRAKIS: The review time -- that's the statutory time
17 frame, right. Not necessarily sitting in the office some of them are issued
18 quicker than others. I am just now referring -- referring this --

19 COMMISSIONER PERRY: Well, some of them are what we might call
20 no-brainers.

21 MR. MEFRAKIS: Right, and they are issued faster.

22 COMMISSIONER PERRY: (Inaudible).

23 MR. MEFRAKIS: Fast.

24 COMMISSIONER PERRY: Your department (inaudible) my opinion on this.
25 We have certain times of year when construction goes a lot better, like pouring

1 concrete in June is a whole lot better than pouring it in November. And, this
2 is actually holding up a lot of people from proceeding with legitimate business
3 purposes and I'm concerned that any of that delay that may be unnecessary be
4 eliminated.

5 MR. MEFRAKIS: Sure, I don't have the time frame or how long -- a
6 breakdown of how long it takes to issue construction permits here. I am not so
7 sure if I'm able to do that or not, I will try to look into that. These
8 construction permits mostly are issued by the regional offices.

9 COMMISSIONER PERRY Well, I don't care who does it. I want to know
10 why it's not getting done fast enough because people call me up and say, you
11 know I've got to wait six months just before I can go ahead and start and I'm
12 not asking them to do anything that's difficult or anything out of the ordinary.
13 And, if -- I'm not positive that's the case and I keep asking and I'm not
14 getting an answer that says yes, yes we respond right away. We tell them when
15 it comes in, how long they should expect to wait.

16 MR. MEFRAKIS: Are you referring to the sewer extension in
17 specifically?

18 COMMISSIONER PERRY: No.

19 MR. MEFRAKIS: No, okay. Because I know the sewer extension
20 construction permits are -- there is a quick turnaround for those, so.

21 MR. GALBRAITH: When you sometimes diagnose those kinds of things is
22 -- is helpful when you get a call like that to take that specific example and
23 either call me or Refaat and we can trace that and -- and help maybe either one
24 help you understand what the process is or two help us debug our process.

25 COMMISSIONER PERRY: And, frankly I'm looking for ways that I can help

1 you do that. What I am dying to be able to do is go back and say to someone
2 that, oh have no fear their going to get this worked out for you really well
3 because their just so efficient and so good, anxious to please. But, I am the
4 person in the middle.

5 MR. GALBRAITH: Sure, well and -- and like I said I think taking
6 those specific instances sometimes can like debug the process or find, you know
7 maybe it is one engineer who is just particularly busy at that time. Well, if
8 we know that somebody really needs that permit maybe we can just make some
9 re-assignments or something like that.

10 COMMISSIONER PERRY: Which is of course why I have been asking for
11 these reports all along, because if you can't measure it you can't manage it.
12 And, this -- it seems like whatever we can do to help you manage it, we will try
13 to do. But, let's try to be more responsive to the consumers of this state.

14 MR. MEFRAKIS: And, that -- and that's exactly what we are trying
15 to do is get those reports out. We are still working debugging the system and
16 we're trying to identify those facilities, that way we all more responsive to
17 those needs. So we appreciate your comments on that. I just want to mention
18 that there was a mistake on the last commission meetings report. The permits
19 that were issued on time since January 2006 were inflated and that's due to some
20 computer errors, so. We have corrected that, so what you have here before you
21 are the correct numbers. So I just want to mention that on the permit issued on
22 time we've issued almost a thousand permits since January 2006. We have missed
23 eight-five permits missed the due date. That brings a total percent permits
24 issued on time to 92% excluding -- that's not including backlog. Obviously if
25 you include the backlog the percent will go down. We're always going to have

1 lower than 100% because we have backlogs that have missed the time frame. Once
2 we have a manageable backlog I think you will see a much better numbers here.
3 On the -- speaking of the backlog on the second page, on Page 266 we in the past
4 have expressed backlog in terms of expired permits and that's what we typically
5 had -- what we had as far as we have done some work with -- with our two systems
6 were now we're finding the backlogs as ones that we have received and passed the
7 time frame for issuing a permit. Again, you'll see two tables one is for
8 permits requiring public notice and to put things in perspective I kept the same
9 data that we -- I presented back in -- in -- in the last commission meeting.
10 And, -- and brought up new data as of June 20th to show some comparison here.
11 We've done some clean-ups in our system and that shows a significant reduction
12 in backlog for the site-specific type of permits. There is a drop of three
13 hundred seventy-nine to hundred sixty-three and that's due to a number of
14 things. You got the lagoon policy and we've got things that we have worked hard
15 on for issues. And, also some clean-ups in our system that permits had been
16 issued but the data was not up -- up -- updated in our systems, so we -- I had
17 to go through the file and look at each permit and -- and permit by permit and
18 try to clean up some of the data so we have better data. But, -- but there's a
19 lot of factors that contribute to this improvement and reduction issuance of
20 permits or reduction of backlogs. The second table are typically the general
21 permits and there is a slight increase or not slight increase but there is an
22 increase from May to -- as far as the backlog to June -- compared to the data
23 that we pulled out in June 20th. And, that's not unusual a lot of times you see
24 general permits, they all come due at the same time and so, so you see a bump
25 when -- when they're not issued on time. So we're trying to make progress in

1 getting some of this general permit templates renewed on time, have the work
2 group as needed ahead of time. And, so we -- we have made significant progress
3 so hopefully we'll see an improvement in the future here on some of those
4 general permits. As far as the CAFO general permits Randy is going to speak
5 about that, okay. Those are backlogged that are not tracked in our centralized
6 application tracking system, but Randy is here and he'll speak of that -- that
7 later. Just to give you a perspective of all the expired permits we have about
8 thirteen hundred expired permits out there. If you add up all that backlog in
9 our system and CAFO's and all that, that leaves around three or four hundred that
10 are expired, but are not -- are not on the backlog they are still within the
11 time frame. As we improve this we will improve the backlog reporting. There
12 are things that we consider backlog here that are not truly backlog because
13 application have been received prior to expiration and so those are the ones I
14 cannot segregate that from here so we are lumping them as a backlog. If the
15 application -- we send out letters to applicants or to facilities ahead of time.
16 Two hundred and ten days before their permit expires and if we get those
17 in-house and the permit has not expired then they stay in-house until the permit
18 expires and we issue them. So we were -- we were working -- we are working
19 internally on ways to maybe help us to issue those permits and have maybe a
20 different effective date and --

21 COMMISSIONER PERRY: Help me here. I think if I understand you
22 correctly. You get some that have not expired, but you've been waiting until
23 they do expire to reissue.

24 MR. MEFRAKIS: Correct.

25 COMMISSIONER PERRY: And you're thinking that maybe you could go ahead

1 and just issue a new one with a sooner date.

2 MR. MEFRAKIS: Well, we're working on getting --

3 COMMISSIONER PERRY: You have people who are being prompt, you know
4 getting to you in time, and it seemed to me that would be a nice reward system
5 to get it right back to them. Here's your new and that's done with not rather
6 than wait have them --

7 MR. MEFRAKIS: They -- they still operate even if the permit
8 expires they are still operating under --

9 COMMISSIONER PERRY: I completely understand that.

10 MR. MEFRAKIS: And -- and -- I mean there's a -- I don't know
11 what percent the situation is, but we are working on ways to -- to improve that.

12

13 COMMISSIONER PERRY: I am glad to hear that.

14 MR. MEFRAKIS: Obviously we have a backlog that --

15 COMMISSIONER PERRY: I don't think that takes any action on our part,
16 but it shows responsiveness on yours, and I think that's good.

17 CHAIRMAN HERRMANN: Our staff guidance and for to emphasize
18 Commissioner Perry's comments. I have had a number of complaints and a number
19 of contacts of small municipalities, villages alike who have been given a review
20 but they have not gotten a construction permit and their coming up on the end of
21 the option on the piece of property that they have for the construction of their
22 facility. And, in some cases the end of their loan commitment and they have
23 been unsuccessful in getting permit action for construction permit out of the
24 department, and I think there are cases where maybe there should be an emphasis
25 placed on situations like that to speed those ahead.

1 MR. MEFRAKIS: Your comments well taken and we'll discuss this
2 internally here.

3 CHAIRMAN HERRMANN: Thank you.

4 COMMISSIONER HARDECKE: I've got one question, when you first started you
5 made a comment that the -- something about the statutory requirement is that one
6 hundred eighty days is statutory time frame.

7 MR. MEFRAKIS: Correct.

8 COMMISSIONER HARDECKE: You have one hundred and eighty days to do it, is
9 that --

10 MR. MEFRAKIS: That's correct for new construction.

11 COMMISSIONER PERRY: Or you have to give the money back or something.
12 We passed that didn't we?

13 CHAIRMAN HERRMANN: Yeah. For filing a completed application you have
14 one hundred eighty days otherwise they get their application fee back, correct?

15 MR. MEFRAKIS: Correct.

16 CHAIRMAN HERRMANN: That was statutory as designated.

17 MR. MEFRAKIS: That's my understanding.

18 COMMISSIONER PERRY: We passed that to help facilitate moving.

19 MR. MEFRAKIS: Yeah, that's correct.

20 CHAIRMAN HERRMANN: And, the legislature did to.

21 MR. MEFRAKIS: One thing that I want to mention is my reporting
22 here does not -- and the operating permit does not distinguish between a new
23 versus a renewal. I am not able to segregate that and so for renewal we're
24 using the same statutory deadlines as a -- as a guidance to issue those permits.
25 Regulation is not clear, so just kind of bringing that up to your attention

1 here.

2 COMMISSIONER HARDECKE: So if that time frame was shortened to one hundred
3 twenty or hundred and fifty days would that speed up the process in your
4 department? Or, is it just the backlog or what has to be done in there. I mean
5 you have thirty-day public notice that leaves you a hundred and fifty days.

6 MR. MEFRAKIS: You -- you're referring to the construction
7 permits you mean or --

8 COMMISSIONER HARDECKE: Right.

9 MR. KIXMILLER: To be quite honest we are not holding applications
10 just because we want to sit on them. I mean it comes down to a resource issue.
11 There are things that have to be done in order to review it. We have to have
12 appropriate staff, there has to be a -- a certain items like public notices that
13 come into it. I mean just coming up and saying all of a sudden hey we want you
14 to do it in a hundred and fifty days, you know we have to consider okay how much
15 extra staff are we going to have to have on board in order to meet that
16 requirement. What other things are we going to have to do. Are we going to
17 have to demand that permit applications that are incomplete that we just return
18 them back to them or something like that, I mean.

19 CHAIRMAN HERRMANN: That's a direction of the commission by the way.

20 MR. KIXMILLER: Well we do that to some extent. What I'm
21 saying is if we come up with any comments at all. Does that mean we call it
22 incomplete and automatically send it back.

23 CHAIRMAN HERRMANN: No.

24 MR. KIXMILLER: So, you know there is a lot of times were we
25 actually have comments and we give them to the facility and it takes awhile for

1 us to get those back from them. So these time frames that you're seeing
2 in CATS do not account for that process. Does not account for the process
3 that it takes for us to try to get information or to try to get applications
4 corrected. It's not that sophisticated of a tracking system. So, it -- it only
5 counts from the day we receive it to the day that its action -- an action is
6 actually taken on it.

7 CHAIRMAN HERRMANN: The day you receive a completed --

8 MR. KIXMILLER: No, the day we received an application.

9 CHAIRMAN HERRMANN: No, no you look at the commission direction and
10 the commission direction will say when you get an approvable --

11 MR. KIXMILLER: Right, but that -- but our action -- or our CATS
12 data is not refined enough to track that information.

13 CHAIRMAN HERRMANN: It better be.

14 MR. KIXMILLER: That's not the system that was built.

15 CHAIRMAN HERRMANN: Mr. Tupper and I both go back to the days when we
16 both objected strenuously to some engineers who were turning in incomplete,
17 unacceptable reports and the commission or I'm sorry the staff used to take the
18 time to sit down and essentially re-design or design it for those people. And,
19 a Missouri Society of Professional Engineers at the time said that's -- that's
20 unacceptable. We don't pay staff to do the engineers work for which he is
21 collecting the fee. So that's when we decided that is has to be a complete
22 application when your time clock starts. If you get something that's -- that's
23 unacceptable then you send it back.

24 MR. GALBRAITH: And that is a -- that's a good goal and nobody
25 would disagree with it. I would say there is two caveats to that though.

1 There's -- there's a lot of gradation between a totally unacceptable, you know
2 incomplete application and one that's 75% complete and so drawing that line is
3 one thing that's difficult and the other is frankly, Chairman it's politically
4 difficult to enforce that strictly and I think you can understand what I'm
5 saying.

6 CHAIRMAN HERRMANN: I think there's a difference between deficient and
7 unacceptable. Now, if it's deficient and they haven't answered all the
8 questions that's -- that's fine, but if it's unacceptable and it's not complete
9 enough to be able to do a review and issue a permit.

10 MR. KIXMILLER: I agree Chairman and actually I have directed my
11 staff to do just that. We have a completeness checklist. There are certain
12 items that you go through, you don't do a review on them, you just see if
13 they're there. If they addressed those items somewhere in the application, we
14 do a completeness checklist. We try to do it within ten days of receiving the
15 application that way if there is some item that their missing, for example if
16 they didn't submit a fee we will let them know that they didn't submit to try to
17 get that information in as quickly as possible, but if it's severely deficient
18 they didn't submit a major pieces of the application we would just simply return
19 that to them to let them know that these things that they need to fix and get it
20 back to us rather than wait the one hundred twenty days that it takes in order
21 to tell them that. So we -- we do a completeness check, but what I am saying is
22 that those -- those pieces of data you're not seeing in CATS because when we do
23 a completeness check and return the application it's taken out of CATS. So
24 we're talking about the applications that were -- that we are supposed to have
25 deemed complete and we're working on --

1 CHAIRMAN HERRMANN: Okay, that's when the time frame starts.

2 MR. KIXMILLER: And that's -- but some of the times those complete
3 applications there may be some major issues that arise whenever we get into the
4 review of them and what we're not tracking in CATS is the time that it takes us
5 -- the time that it takes the applicant to get back to us, the different steps
6 of comment periods, the -- the -- those types of details it's now showing
7 exactly why these time frames are being stretched out that long, and what I am
8 saying is, is that it's not that in a lot of cases it's not that that
9 application is just sitting on somebody's desk doing desk time it's actually
10 process that's involved in that. And, by just saying we want it done faster
11 that's fine but unless the resources are there to do them faster it -- it
12 doesn't really help us.

13 CHAIRMAN HERRMANN: Well, considering all circumstances and going back
14 to my initial comment. There are some that I think should be given expeditious
15 attention, were they have a loan closing, were they have an option on some
16 property were they have any circumstance which should put them up ahead somebody
17 whose really not that of a hurry.

18 MR. GALBRAITH: And generally if we know that but sometimes --
19 sometimes they don't tell us that, they tell you or you know the representative.
20 Sometimes if they'll just take the time to tell the permit engineer that he
21 can, he or she can manipulate his or her workload to make that happen.

22 COMMISSIONER PERRY: Do you have a prioritization process?

23 MR. KIXMILLER: Generally, we review applications on a first come
24 first serve basis. So, you know first in first out type of arrangement. There
25 are some cases where we will prioritize a particular permit. You know, I don't

1 know specific instances because they range the full gamut. If we know that the
2 department has a specific interest in something due to enforcement action. If
3 we know that this construction permit is necessary to correct some kind of
4 ongoing violation, you know we'll try to prioritize them, you know on an
5 environmental protection basis, but you know it's really hard to prioritize them
6 based upon people saying well I really need this for my construction application
7 to go through because I need to start building because everybody's in that
8 situation.

9 COMMISSIONER PERRY: Yeah, I understand that. What I think we've also
10 discussed and I would bring up now is every now and then you have one that
11 that's a difficult permit to deal with. It -- it's something rather unique,
12 they have some difficult problems in what they're facing that take a lot of your
13 time or staff's time. Meanwhile, you have sitting there a stack maybe it be
14 six, ten, fifteen that would not take a lot of time but they're being plugged up
15 by that one that is, and that's why I asked if there is some sort of
16 prioritization process where these things can be tracked. So those things that
17 don't need to be stopped, that should be able to flow easily, can continually
18 flow easily even while you have some sort of special project going on. And,
19 that's why is there some process you know whether you know first in first out
20 may not be meeting the needs of expediency within the confines of the staff you
21 have.

22 MR. KIXMILLER: I think that's a challenge. It's kind of a
23 challenge in project management.

24 COMMISSIONER PERRY: Absolutely.

25 MR. KIXMILLER: In my position it's a little bit easier for that

1 to do -- for me to do that because I have a staff of engineers under me
2 reviewing applications. In the regional offices it's a little bit more
3 challenging because you may only have one or two engineers. So whenever they
4 get bogged down by an application it's -- it's hard for somebody else to step in
5 there and pick it up, because there's nobody else there. So it's a challenge
6 for them and then for me the -- the challenge is, is that it seems like you
7 never know when some of these applications are going to get you bogged down.
8 Whenever, the scrutiny gets raised on an application, you know it may be the
9 smallest of facilities that is -- is causing the problems and you don't know
10 about it until something happens with it. And, then that engineer is kind of
11 stuck with that because once something gets raised to the level of the public
12 eye you have to address those issues, you have to address the media calls, you
13 have to address the -- the request for briefings and stuff like that. So it's
14 -- it's difficult to -- to get away from that and the problem is, is that you
15 can't -- you can't just devote one staff member to doing that because they won't
16 be able to be responsive to any of they're projects if they're constantly
17 involved in all the high profile cases.

18 MR. GALBRAITH: If you get, you know when you get those kind of
19 calls, you know call Randy or call Refaat, because that will help you more --
20 more than this kind of exchange. It will help you understand the details of --
21 of how these things work.

22 COMMISSIONER PERRY: I understand the challenge. I don't have any
23 problem with understanding the challenge. But, I also understand the consumer
24 need to -- and the feeling that government is being unresponsive and I just
25 returned from Brazil and I am now an expert unresponsive government (laughter)

1 and that scares me. And, the reason we have activity in our government such as
2 these commissions is to kind of help make sure that doesn't happen. But I'm
3 please don't misinterpret what I'm doing is being criticism of that which you
4 are doing. I am looking for ways to make it more efficient within the confines
5 that we're dealt. And, I'm not asking for -- so if somebody calls me and then
6 I'm going to call you and try to give them special attention. I don't think
7 that's appropriate either. I'm -- I'm looking for ways for the process in
8 general to go more smoothly. I think this is very helpful. I would hope that
9 everybody thinks that the fact that we're trying track it means we're paying
10 closer attention to it. You know, if I know I've got three cases I've got to go
11 to court tomorrow I'm going to have to figure out a way for my time to all meet
12 those deadlines, and that's what we are asking you to do is sort of push in a
13 system of knowing that you got to meet deadlines and get them done, because you
14 know there are people out there whose lives and livelihood depend on how quickly
15 you can get these things done.

16 COMMISSIONER HARDECKE: I guess that kind of goes back to my original
17 question. What we want to know is that it's being worked on not that it sits
18 there for four of the six months before somebody looks at it and starts on it.

19 MR. GALBRAITH: I can assure you. We are not -- we don't play to
20 the time frames. I mean -- I mean the object here is to get everything done
21 within our statutory time frames and then we start learning how to get faster
22 and faster and do, you know and -- and keep, you know we're not going to say we
23 give everything a hundred and eighty days or sixty days no our job is finished.
24 No, we need to keep working on the system. There are -- so -- and -- and that's
25 -- and by starting to track these the way this is a beginning to help us manage

1 our work flow and be able to report to you are we making progress, do we need to
2 improve.

3 COMMISSIONER PERRY: And you realize a few years ago they had no idea
4 of how many we had been sitting there overtime or how long they had been sitting
5 there. I again I appreciate the progress being made, I'm just feeling like I
6 got to keep pushing.

7 MR. MEFRAKIS: And, it takes a lot -- a lot -- a lot of our time
8 actually digging those and minding those data. And, we're going to continue to
9 do -- to do this and as we refine the data. We will have better data. One of
10 the things I would like to do is to answer your questions hopefully and I hear
11 well here is to kind of sort of create a pie chart that tell you how -- what
12 percent are -- of these permits are issued within twenty days and within forty
13 days and all this to try to get a better appreciation of our responsiveness.
14 Right now I don't have the ability to do it and -- and -- and -- and when I get
15 to that point I will present that to you.

16 CHAIRMAN HERRMANN: One last comment. I also appreciate all of the
17 progress that's been made and the way it's been handle. But, I would still
18 encourage staff to consider that there are priority projects once and awhile
19 that should be looked at before some of the others. Extenuating circumstances
20 that may cause it to be a priority and those -- there ought to be a method by
21 which you can say well this one ought a be handle in the next thirty days or it
22 can wait for the second thirty days or whatever.

23 MR. MEFRAKIS: And I wish I could document some of these
24 instances that we had that we have done this and we probably need to continue on
25 that.

1 CHAIRMAN HERRMANN: Great, great, okay. So my answer to the people
2 who have called me is that, well did you let staff know?

3 MR. MEFRAKIS: Correct.

4 CHAIRMAN HERRMANN: Okay.

5 MR. MEFRAKIS: If you don't have any more questions on that
6 backlog I would like to move on to the next.

7 CHAIRMAN HERRMANN: Can we hold Randy for after our closed session or
8 our lunch period.

9 MR. KIXMILLER: If you want it will probably only take me about
10 five minutes or so.

11 CHAIRMAN HERRMANN: I think lunch is here and we can let other
12 people. You have your motion Mrs. Perry?

13 COMMISSIONER PERRY: I move that the Clean Water Commission go into
14 closed session to discuss legal, confidential or privileged matters under
15 Section 610.021 Subsection (1); personnel actions under Section 610.021
16 Subsection (3) of the same statute; personnel records or applications under
17 Subsection (13) or records under Subsection (14), of Section 610.021 of the
18 revised statutes of the State of Missouri and those things which are otherwise
19 protected from disclosure by law.

20 COMMISSIONER EASLEY: Second.

21 CHAIRMAN HERRMANN: Moved and Seconded. Any discussion? So the
22 commission will go into closed session.

23 CHAIRMAN HERRMANN: Okay, we are out of closed session and back into
24 administrative -- open session and we will continue with hearing Randy
25 Kixmiller.

(End of Tape 2 Side B)

1 MR. KIXMILLER: Thank you, commissioners. It's been awhile since
2 I've --. There's information regarding the permits backlog in there you'll see
3 that there's a section there where the CAFO general permit renewals have been kind
4 of carved out and treated separately. It's not that we treat CAFO's special even
5 though CAFO's seem to be special in every way. It's actually happened that there
6 was an oversight whenever these CAFO renewal applications came in they weren't
7 being logged into CATS. So we've kind of discovered that and we're correcting
8 that, but it wasn't corrected whenever we had to run these numbers. So we
9 pulled out the -- the ones that are kind of still outstanding and that
10 represents the, the number of renewals were not processed at the time. We do
11 have a summer intern that is working on our CAFO renewals again CAFO permits have
12 to be special. They're an unusual general permit in that we actually have to
13 have an attached sheet that goes with them. Most of our general permits are
14 just a template, every permit is the same. Well, CAFO's are not. They have an
15 extra sheet of -- on that, and unfortunately what's -- what's happened to us is
16 EPA has asked us to collect more data. In the past EPA has only asked us for a
17 single data point and now they're asking us for twenty-five data points and we
18 weren't capturing all of those data points in our attachment. So we are having
19 to go back into each one of these renewals and review some information again and
20 pull that information out. So we have hired a summer intern to help us through
21 that, she's been doing fairly well, I don't think she will be able to get
22 finished but we'll see after the summer where we're at and try to project how we
23 will get through that work load.

24 COMMISSIONER PERRY: What are those data points? The nature of them.

25 MR. KIXMILLER: Part of the data happens to do with the amount of

1 storage that they have. The mortality management that they have. The land
2 application area they have. The amount of land that is draining into their
3 storage area. So, it's just basically some statistics as far as how much manure
4 they have to manage and how much land area they have. The other piece of
5 information in your packet is on Page 270 as requested we kind of put forth an
6 aging of the construction permits that we had there. And, again that just
7 tracks how -- how old the permits are from the time that we receive them. It
8 doesn't really track any actions that we've done on the permits. We've been
9 averaging somewhere around one hundred twenty days in getting these construction
10 permits out. Some a little sooner, some a little bit later. Some of the older
11 applications you see there, a couple of them are Class 1A's they almost always
12 run up to one hundred and eighty day time frame because of the time it takes to
13 review and they actually get two comment periods, which is interesting. They
14 get a comment period from the neighbor notice and they get a comment period from
15 when we public noticed the draft operating permits. So, while it seems a little
16 odd that's kind of the way -- that's kind of the situation that we have with the
17 statutes and there's also a couple of applications in there that were fairly
18 high profile. Of course, this is a snapshot in time. There are some of those
19 applications that have been completed since then and we've gotten some new
20 applications, but this kind of shows the amount of applications that we're
21 working with at any one-time. That's pretty indicative. The final note, if
22 there's no questions on that. The final note, I would like to make is kind of
23 just for your information as you know the U.S. EPA revised their Federal CAFO
24 rules in 2003 and as a subsequent to that there was a court challenge to that.
25 And, the circuit -- Second Circuit Court made a ruling on the Water Alliance

1 versus EPA and that required EPA to go back and take a look at those rules. So,
2 they -- they looked at some of the vacated portions of the rules and some of the
3 remanded portions and have published a draft rule on June 30th of 2006. So they
4 have a rule out there that's currently on public notice that discusses and takes
5 into account those remands and vacatures. The rule is open for public comment
6 for forty-five days ending August 14th of 2006. The departments currently
7 looking at this draft rule and evaluating how it's going to affect us. One of
8 the significant portions is the requirement for Nutrient management plan.
9 Our initial opinion is that this is going to have a major workload impact on us.

10 To kind of to summarize this the court ruled that Nutrient Management plans had
11 to be a part of the permit, it had to written into the permit, and furthermore
12 that we had to place these permits on public notice. Which is kind of unusual in
13 the fact that we don't normally public notice each individual general permit. So
14 we're -- we're still kind of working on the specifics and how that's going to
15 affect us and there are some options the EPA discussed in a draft rule whereby,
16 it may help reduce the impact that this has on us. But, it does look like it's
17 going to be an additional workload burden on us. That's pretty much all that I
18 have, if there are not any questions.

19 CHAIRMAN HERRMANN: Randy you referred to Page 270. I look on Page
20 269 and it's a list of I suppose water quality review studies which coincides
21 with the figure of 29 on the previous page. So I assume that's what this just
22 is.

23 MR. KIXMILLER: That's correct.

24 CHAIRMAN HERRMANN: There are a couple that are an older burr under
25 the saddle on a couple of these and I gather these have not been public noticed.

1 MR. MEFRAKIS: Yeah. There's no public notice they're pending.
2 For example the MSD study associated with that takes times.

3 COMMISSIONER HERRMANN: Yeah.

4 MR. MEFRAKIS: There is a reason behind each one of those that
5 have been there for a while. So we are keeping the project active until they
6 submit the necessary information to us.

7 CHAIRMAN HERRMANN: You don't have any schedule on anything other than
8 water quality review sheets?

9 MR. MEFRAKIS: On those facilities?

10 CHAIRMAN HERRMANN: Yeah.

11 MR. MEFRAKIS: That's all we have.

12 CHAIRMAN HERRMANN: I am not worried about MSD I am worried about a
13 few of the others down below sure old burrs under the saddle.

14 MR. MEFRAKIS: Okay.

15 MR. GALBRAITH: Do you know where you backlog line is?

16 MR. MEFRAKIS: Yeah, I -- I don't know why this was printed that
17 way. For some reason I apologize for the print.

18 MR. GALBRAITH: Not all of these are backlogged.

19 MR. MEFRAKIS: Not all are backlogged.

20 CHAIRMAN HERRMANN: Pending May 1st 2006 apparently.

21 MR. MEFRAKIS: Right now, anything older than two months we have
22 fourteen that are older than two months.

23 MR. GALBRAITH: So everything from Wood Trust Assembly above was
24 plus sixty days as of June 20th, when this report was run. And, everything
25 below that was less than sixty days.

1 MR. MEFRAKIS: In fact as of today there are ten instead of
2 fourteen. So we --

3 MR. GALBRAITH: Many of these probably about half of these that
4 are -- that are backlogged are lagoon permits that are ready to be reissued, but
5 we are just waiting the -- the finalization of a policy.

6 MR. MEFRAKIS: And the twenty-nine is actually as of today
7 twenty-one, so that's dropped.

8 MR. GALBRAITH: So twenty-one pending a (inaudible) backlog.

9 MR. MEFRAKIS: Correct.

10 MR. GALBRAITH: As of today.

11 MR. MEFRAKIS: As of today. It's just what I have done is --
12 we're using the April 18th 2005 as a -- as a base year to show you -- to give
13 you an appreciation of the comparison. We had the number of water quality
14 review sheets requested older than two months were about eight-six and now ten,
15 okay. And, the backlog back then was a six months backlog. And, now we are
16 able to issue those a lot faster.

17 CHAIRMAN HERRMANN: Renewals for instance would be public noticed when
18 you get a --

19 MR. MEFRAKIS: On a site-specific they will be public noticed,
20 correct. And, not all renewals get water quality review sheets.

21 CHAIRMAN HERRMANN: I appreciate that. But, they would be on the
22 Web-site.

23 MR. MEFRAKIS: The public notice permits, correct.

24 CHAIRMAN HERRMANN: Right.

25 MR. MEFRAKIS: We have made some changes to our Web-site to make

1 it easier to view the permits.

2 CHAIRMAN HERRMANN: And, the water quality review sheets would also
3 assess the capability of the facility?

4 MR. GALBRAITH: You mean their financial capabilities.

5 CHAIRMAN HERRMANN: No, no physical capability treatment capability.

6 MR. MEFRAKIS: Well, the water quality review sheet is designed
7 to tell the facility what type of limit they need to design to and so usually
8 the design parameter are not included in the water quality review sheet because
9 they don't know what to design to until they know what the limits will be.

10 CHAIRMAN HERRMANN: I am talking about renewals.

11 MR. MEFRAKIS: Renewals we take in consideration that the design
12 parameter and all that.

13 CHAIRMAN HERRMANN: Okay. I will confide with your director in a
14 couple of these of which I have a great concern in which we haven't in the past
15 had some -- some very -- very difficulties with.

16 MR. MEFRAKIS: Okay.

17 CHAIRMAN HERRMANN: Give them a bit of scrutiny. I'm sorry go ahead.

18 COMMISSIONER HARDECKE: On Page 266 you've got 190 of the CAFO permits but
19 there aren't that many on Page 270.

20 MR. MEFRAKIS: Okay, they're here.

21 MR. KIXMILLER: The 390, they're CAFO renewals so they're actually
22 those are operating permits. The number on 270 those are just construction
23 permits, so those are just applications were the CAFO is either building or
24 expanding.

25 COMMISSIONER HARDECKE: So this is a total list of new --

1 MR. KIXMILLER No, those are -- those are only the list of
2 renewals that we haven't processed yet. There's approximately four hundred and
3 fifty CAFO general operating permits and I think there is twenty-one CAFO
4 site-specific permits.

5 COMMISSIONER HARDECKE: I guess on Page 270 that list is all of the new
6 construction.

7 MR. KIXMILLER: Well some of them are existing sites were there --
8 they have some structure --

9 COMMISSIONER HARDECKE: It's a permanent --

10 COMMISSIONER PERRY: It's an expansion.

11 MR. KIXMILLER: It's a permit to construct, yes.

12 COMMISSIONER PERRY: Are there any that have been -- I don't know how
13 to put this in words. You have some here that go a hundred and sixty-two days
14 old down to twenty-one days old. Are there very many in between that have come
15 out and been issued?

16 MR. KIXMILLER: Well, I guess for instance like I said some of the
17 top ones are -- have certain complexities or difficulties that we're working
18 through. Like I said, Sharp and PSF Whitetail are Class 1A's they take along
19 time because we have to go through a public notice process. There are a couple
20 of them like the McCaw and Hampton site that have some technical issues
21 that we haven't resolved and a case like Luektemeyer were I am sure you
22 are aware of -- of the scrutiny that one's under. But, yes there are some that
23 have gone out. Like Ruth Farms, Nick Vang, and Fisher Hog Farms have been
24 issued since this list was made. And, I think there's a couple of them like
25 Carmack, Scheer and L&D that are probably be issued by the end of the month

1 that's likely. So yeah, they -- they don't they get in line but and we start on
2 them on a first come first serve basis but just because we -- we have problems
3 or are waiting on comments we go ahead and pick up the next application and get
4 to work on it.

5 COMMISSIONER PERRY: Which is a really good idea.

6 MR. KIXMILLER: So, I mean we don't it's-- it's -- basically not
7 that we have to wait until one projects done before go to the next. We go ahead
8 and when we get to a point were as a department we can no longer progress on a
9 permit, we go to the next one. So if we are waiting on comments we're going to
10 start on the next review and then -- then it's a matter of who can get their
11 comments in or their responses to us quickest as to whether we want. Because
12 once we get comments back in we get back to work on that project, to try to keep
13 them moving. So yeah, your -- that's -- that's correct there are some of these
14 ones in the middle have already been picked off and out the door while we're
15 waiting on the ones at the top to get their information to us.

16 COMMISSIONER HARDECKE: That's good.

17 MR. KIXMILLER: Are there any further questions? Thank you.

18 CHAIRMAN HERRMANN: Thank you, Randy. **State Revolving Fund** --

19 COMMISSIONER PERRY: I would have said something Randy, but they made a
20 motion for me to be quiet. (laughter).

21 CHAIRMAN HERRMANN: No, you made the motion. (laughter).

22 COMMISSIONER PERRY: It was a double motion. I don't know which one
23 you were voting for.

24 CHAIRMAN HERRMANN: Joe Boland. We will inform your husband of the
25 commission action on you being quiet. (laughter).

1 MR. BOLAND: Item #21 is just a couple of brief updates on the

2 SRF. The first one is Ozark Clean Water Company they came before this
3 commission requesting \$500,000.00 for a -- to address a non-point source the
4 issues specifically -- failing on-site systems. We have met with them a couple
5 of times and are continue to try and get a loan agreement worked out with them.
6 I have to be honest with you it's been a little bit more a challenge than I -- I
7 thought it would be. It -- we -- we had developed a -- based on an existing
8 loan program we had drawn something up, but it proved to be a little bit more --
9 more than what they wanted to agree to, so we have kind of gone back and are
10 trying to simplify the loan agreement as much as possible. We do have a draft
11 to our legal counsel right now and we're getting comment from them, so we are
12 going to continue to work with them. They have been very patient with -- with
13 how long this has taken so we're trying to push -- push that as much as we can
14 here. Any questions on Ozark Clean Water Company?

15 COMMISSIONER HARDECKE: What kind of problems did you run into?

16 MR. BOLAND: Typically some of the -- for a typical loan it --
17 there are quite a bit requirements on -- on payback and essentially Ozark Clean
18 Water Company doesn't have any operating cash. It -- it -- they -- the big
19 stopping points for some of the payback issues, timing of payments, and just
20 some of the default requirements that we have and default remedies that we
21 typically have in a loan agreement. They prove to be somewhat too burdensome for
22 -- for what they wanted to agree to, so we're trying to re-look at that and make
23 it as simple as possible, but still meet our fiduciary responsibilities.

24 COMMISSIONER EASLEY: Where are they located? Ozark Clean Water Company.

25 MR. BOLAND: That proposal was to address about four county

1 areas. Stone County, and around there.

2 COMMISSIONER PERRY: They came in and made a presentation to us
3 sometime back, right?

4 MR. BOLAND: Correct.

5 COMMISSIONER PERRY: And, they were almost like a subcontractor they
6 were gonna go take care of some these smaller facilities.

7 MR. BOLAND: Correct, the proposal was if they can get either
8 homeowner's or uncluster systems, whatever the entity might be to sign on with
9 them they would pay a monthly fee for maintenance. This program would pay for
10 replacement of -- of some of the failing systems that are out there. So as a
11 homeowner if you had a failing system you could sign up with them, the money
12 would be funneled through Ozark Clean Water Company, they would go in and
13 replace the system and arrange a loan with that homeowner so in theory they
14 would have a cluster of homeowners or other on-site owners, cluster systems and
15 they would be essentially the broker of those loans.

16 COMMISSIONER HARDECKE: But, weren't they going to take ownership of the
17 waste treatment facilities?

18 MR. BOLAND: That's correct. That's correct.

19 COMMISSIONER HARDECKE: They would be collecting the payment plus their
20 management fee.

21 MR. BOLAND: That's correct.

22 COMMISSIONER HARDECKE: Well, I think in remembering back to when they came
23 to us it's important that you get those details worked out because that system
24 it could get away pretty quickly if it wasn't well structured.

25 MR. BOLAND: We would agree with you. And, we -- we are

1 certainly behind the concept it's just trying to get the structure set up
2 correctly to do this. So we are committed --

3 MR. GALBRAITH: And it is a first so we're learning as we go. I
4 think the first -- the first loan agreement that we -- we gave them was
5 structured on some existing direct loan agreements that we've had with entities
6 and they just, you know the size and the complexity of the agreement just kind
7 of took their breath away. And, so we offered to go back and try to simplify it
8 and make it a more -- make it so they didn't have to hire a hundred hours worth
9 of attorney fee to go through it for them and because they're a fairly small
10 operation trying to do some good things but they're with -- with not a lot of
11 capital so it's been -- it's been a learning and somewhat arduous process.

12 MR. BOLAND: And we recognize that it is a pilot program so we
13 do -- we would like see -- see this effort go forth. But, we would like to get
14 some things very finite before we do.

15 COMMISSIONER HARDECKE: Well, they do have some systems that they have taken
16 over from like contractors and things other than this that they're doing, right?

17 MR. BOLAND: It's my understanding -- they do have several
18 clients basically it's my understanding in talking with Mr. Casaletto
19 those are new systems. Basically condo complexes where the developer has
20 already signed agreements to, you know turn over the ownership of those
21 collection systems to Ozark Clean Water so they kind of have a captive audience
22 so to speak. This program is designed for the failing -- existing failing
23 systems that are out there, so the client base -- the potential client base
24 whether they are willing to sign up for these loans or not that to us is still
25 one of the major questions, and could be a possible stumbling block. Some of

1 the economics when you start looking at rates, and plus on top of maintenance
2 fees it may become challenging to find clients to be willing to do that.

3 CHAIRMAN HERRMANN: My memory is these were all supposed to be outside
4 of municipal service areas or regional systems service areas.

5 MR. BOLAND: That's my understanding. Yes, non-permitted.

6 CHAIRMAN HERRMANN: Right.

7 COMMISSIONER HARDECKE: And, the way I understood it you were going to
8 remain, I guess review each of the projects on its own not just turn the half
9 million over to them in one lump sum, right?

10 MR. BOLAND: We would want to have some sort of review in
11 there, yes. Any other questions?

12 CHAIRMAN HERRMANN: Thank you, Joe.

13 MR. BOLAND: One other issue on **priority point systems** are
14 stakeholder group we have met twice and we have another meeting scheduled on the
15 21st to -- to basically re-design are priority point system. We've broken it
16 down into several areas and as stated in your briefing the general groups
17 include water quality, public health, system sustainability, regionalization,
18 coordination, financial capability, and non-point source. We're meeting with
19 our stakeholders to -- there are several sub-points beneath those -- those major
20 -- major categories and we're meeting with our stakeholder group to prioritize
21 all those and assign -- assign points. And, so far we've gotten quite a bit of
22 support and it's going fairly well. Any questions on that?

23 CHAIRMAN HERRMANN: Thank you.

24 MR. BOLAND: Thank you.

25 CHAIRMAN HERRMANN: **TMDL status report**, Phil Schroeder.

1 MR. SCHROEDER: I want you to know Mr. Chairman I almost jumped up
2 when you asked for Joe a minute ago. (laughter).

3 COMMISSIONER PERRY: Old habits are hard to break.

4 MR. SCHROEDER: Well, I think this is the first time I have come
5 to you to present a report on a TMDL status and progress for the state. I don't
6 know if this has been presented to you by previous staff or not. It seems
7 appropriate that I do come to you today to talk about this because we are facing
8 some unique challenges with respect to keeping pace with the number of TMDL's
9 being asked of us, and also it's a somewhat unique situation we're facing this
10 calendar year in how we're getting the TMDL's done. This all kind of goes back
11 to a lawsuit that was filed in a consent decree that was signed between EPA and
12 the Canoe Association and Sierra Club, which established a consent decree which
13 requires EPA to get a number of TMDL's completed in the state of Missouri
14 by certain deadlines for each year. For this particular year, calendar year
15 2006 looking at what we've already completed and what we need to complete for
16 this calendar year, it looks like we need to get forty-seven TMDL's done. Our
17 connection to the consent decree numbers comes in a memorandum of understanding
18 that we have with EPA, which basically tells them that we're going to support
19 trying to get these done. Obviously, the impaired waters in our
20 state and we have of course the obligation to see that our waters are repaired.
21 So we're in complete cooperation with EPA to try to get these numbers met.
22 You'll find in your packet in Pages 274-280 information about which water bodies
23 we're targeting this year. The first half of that report, are the water bodies
24 that are targeted by the Department of Natural Resources and the second half are
25 those waters targeted by EPA. For those water bodies targeted by EPA, they are

1 doing the complete work. They are developing the document, they are posting the
2 document out for public notice, they are developing the waste load allocations,
3 developing the TMDL, entering public comments, and issuing the TMDL. So really
4 the only involvement we have in the process for those TMDL's are as commenter
5 during the public comment period. So, just something very unique for us. We
6 don't -- we aren't really thinking we are going to experience any real problems
7 with this process but EPA finds that in order to get the numbers they are going to
8 have to do some of these on their own. We face some of the unique challenges in
9 trying to do some of the TMDL's that they're targeting. As you can see EPA's
10 targeted mostly sediment TMDL's, and as you know, we do not have sediment criteria
11 in the state of Missouri. So it presents a very unique situation in trying to
12 get those done. So we're very curious about how EPA is going to accomplish that
13 task, and we're going to be looking very carefully to see how they draft those
14 TMDL's and offer comments where we think that's appropriate. So anyway, it
15 would appear that we're currently on path with EPA to get the appropriate
16 numbers completed so that they can meet the consent decree obligations. But, we
17 wanted to present this to you just so that you understood in case you were to
18 receive comments from someone as to why EPA is doing these. We just wanted to
19 have that information in front of you. So if you have questions, comments about
20 this process or our progress, I will be happy to try to answer those.

21 CHAIRMAN HERRMANN: I went back to the department site and printed
22 them off. Now, you said forty-one total due now.

23 MR. SCHROEDER: There's forty-seven that are due through the
24 consent decree by the end of this calendar year. And, you'll find more than
25 that listed on the pages. Both EPA and the state have targeted more than

1 forty-seven in order to insure that we make at least forty-seven. Some cases we
2 find after we get into the TMDL drafting process, even through perhaps public
3 notice that we aren't able to finalize it within this year we may want to
4 collect more data, we may want to do some more investigation before we finalize
5 a TMDL. So in order to make those numbers we've targeted more, I think it's
6 over sixty actually.

7 CHAIRMAN HERRMANN: Yes. Thirty-one and thirty-four. Sixty-five. On
8 the department prepared TMDL's you had thirty listed that were identifiable as
9 informing with the consent decree. Thirteen of those were listed as permit in
10 lieu of TMDL's. Go back to Page 124 in the minutes of the previous meeting and
11 I asked John Delashmit from EPA about that condition. Is that
12 acceptable? His answer was, I don't know if we necessarily agree or disagree on
13 this all the time, but EPA's view is that when a permit is going to be issued
14 that's still not adequate justification to remove it from the list. But, once
15 the permit becomes final and is in place then we're happy with that and that
16 would allow us to move -- moving into the other category. In other words he
17 said the permit has to be in place and approved prior to that being acceptable
18 as removing that item from the TMDL list. So none of these are listed as, I'm
19 sorry there are a couple listed as permit approved. The majority of them are
20 not permit approved.

21 MR. SCHROEDER: Right, a lot of those are in the process of permitting--
22 that we're working with permitting staff to determine what the appropriate
23 effluent limitations should be. In order to use a waste load
24 allocation that we would have otherwise put in a total maximum daily load.
25 So instead of drafting a TMDL we're taking what we call the waste load

1 allocation and applying it to permits. The waste load allocation is the mass
2 pollutants that have to be limited to a certain water body to bring it back into
3 compliance of water quality standards. We take that information and we discuss it
4 with the permit section so that they incorporate that as a water quality based
5 effluent limit in the next permit issuance. So, we work with them also on the
6 schedule. Sometimes it's not convenient for them to be able to issue the permit
7 right away. They may want to wait for the next renewal. If
8 the next renewal is coming up within a few months or in a reasonable
9 amount of time.

10 CHAIRMAN HERRMANN: Well, I've said at nauseam my objection to that
11 and how you can derive from -- derive a conclusion from non-presentation of
12 physical factors nor limitations that you can derive a 15/20 or a 10/15
13 limitation on a treatment facility. And, that's what most of these have come
14 down to. That is in my mind not at all definitive in producing a TMDL. It
15 further places on many of these TMDL's places a considerable financial hardship,
16 burden and in some cases insurmountable burden on very communities. To attempt
17 to achieve those results and they're discharging to streams that don't in my mind
18 justify that kind of a limitation. If you're requiring 10/15 or 15/20, I think
19 your essentially doubling or more the cost of construction costs to that
20 expansion or new facility. And, the operation cost is probably quadrupling what
21 would be necessary for the normal 30/30, which is required by our regulations.

22 MR. SCHROEDER: There are several things that we do need to
23 understand when -- when -- whenever it comes time to restore a water that's
24 impaired, or listed as impaired, I will put it that way.

25 CHAIRMAN HERRMANN: Yes.

1 MR. SCHROEDER: And, instead of drafting a TMDL, we try to address the
2 issue through a permit. First thing that we need to understand is that when we
3 do a waste load allocation for the purposes of a TMDL, that process maybe a little
4 different then if we were to just go through the permit process of developing a
5 permit effluent limit based on either technology based limits or even a water
6 quality based effluent limit. A waste load allocation process perhaps is just a
7 little bit different. So, in other words, you would see a
8 change in how a permit effluent limit is derived if we take you
9 through that process rather than through the normal permitting process. The
10 other thing we need to remind ourselves of is when a water is placed on a 303(d)
11 list it's based on what the current standard is at the time, when it was
12 considered as impaired. And we understand that a number of cases, particularly
13 with dissolved oxygen, that the present standard is not appropriate for some of
14 these waters. And, we have tried to hold off in developing a TMDL were we think
15 or have reason to believe that the standard imposed on that water is
16 inappropriate or that the standard that caused it to get on the 303(d)
17 list is inappropriate.

18 CHAIRMAN HERRMANN: It hasn't been applied in that case, because there
19 are some cases in which the limiting factor is DO according to the 303(d)
20 list.

21 MR. SCHROEDER: Right.

22 CHAIRMAN HERRMANN: Arriving at a limitation in the TMDL the permit
23 writer went to the extent of taking BOD in saying well BOD derives the stream of
24 oxygen. So rather than defining the problem he's going back to what he thinks
25 is the root of the problem, which may or may not be the case. And, if you are

1 discharging to, and again my old argument of the drainage ditches in Southeast
2 Missouri where I've said I'll take any permit writer down there with a DO meter
3 and we'll got to every ditch in -- in the boot hill area and if he can find one
4 in which the DO is above five. I'll buy dinner.

5 MR. SCHROEDER: Well, you and I, and I think staff of mine are all
6 in agreement on this issue for waters like main ditch. We have already
7 discussed with the City of Poplar Bluff the fact that the water quality standard
8 on dissolved oxygen in a ditch is likely not to be appropriate. We have one
9 standard, have one numeric criteria for DO, and that's five milligrams per
10 liter across the state for all waters. We know that that's not appropriate for
11 a standard for all waters particularly those which had been highly
12 hydrologically modified such as these drainage ditches in the Southeast part of
13 the state. But, in order to correct that situation, what we need to do is change
14 the standard. We need go back to the of water quality standards and discuss
15 what the appropriate standards are regionally or for certain types of water
16 bodies and address that, fix that, so that we don't first of all get these
17 waters on the 303(d) list in the begin with. And, then we won't have to try to
18 get them off based on some TMDL that's of course based on inappropriate
19 standard. We've truly recognized that problem. But, recognizing the path to
20 get it fixed is along term path, and the problem we're facing right now is that
21 a lot of these TMDL's are required by consent decree to be done now. An EPA's
22 either going to do them based on our five milligram per liter standard or we
23 are going to have to work with the cities ourselves in trying to find some kind
24 of way that we don't impose, like you said Chairman Herrmann, these unrealistic
25 burdens of treatment upgrades where it's not really going to go any good.

1 CHAIRMAN HERRMANN: The Federal Clean Water Act in our own 644 says
2 that beneficial uses and limiting factors should be assigned on site-specific
3 basis.

4 MR. SCHROEDER: Right. We're working --

5 CHAIRMAN HERRMANN: In those cases particularly the drainage ditches
6 in Southeast Missouri are site-specific. To rule out any requirement for five
7 BOD and there's a heck of a lot other streams in the state. The Prairie Streams
8 up in North.

9 MR. SCHROEDER: Right. Well, we're working on reviewing a concept
10 and a proposal to set site-specific criteria on East Locust Creek up in Northern
11 Missouri. We've also looking toward doing the same the Main ditch down in
12 Southeast part and number of other streams throughout Missouri, and in order to
13 do a good job at that though, we have started a process with a group called the
14 Environmental Resources Coalition who got a grant from EPA to study this issue
15 and bring to us the proper procedure for developing site-specific criteria for
16 dissolved oxygen. They're well down -- well along that path at helping us do
17 that. They're collecting data this summer to bring that information to us so
18 that we can help develop the path for developing the site-specific criteria. So
19 we are on track on getting that done for all of these streams that you
20 mentioned. It just takes a lot of time, takes a lot of effort, a lot of
21 research to be able to make the right decisions and I guess we're just asking
22 for your patience to get there. We will get there.

23 CHAIRMAN HERRMANN: My concern is that you're burdening some of these
24 communities and particularly these smaller communities with an unmanageable
25 financial burden by requiring these very, very strict limits. Were I think in

1 lieu of a final study they should be maintained if severe impacts demonstrated
2 on a stream, I think it should be maintained at their level at which they exist.

3 MR. SCHROEDER: Would you entertain a variance?

4 CHAIRMAN HERRMANN: Yeah, sure.

5 MR. SCHROEDER: Well, we may speak to some of the cities that we
6 feel are subject to this DO standard that maybe inappropriate and find out if,
7 if we should bring a variance request to the commission to avoid the drafting of
8 permits that may have inappropriate limits.

9 CHAIRMAN HERRMANN: I think it's entirely appropriate. I can take off
10 about four or five very recent permits which that condition exists.

11 MR. SCHROEDER: If we can have the benefit of that knowledge from
12 you, we would be happy to look into each and every one of those.

13 CHAIRMAN HERRMANN: Okay. On the list of EPA's prepared list you
14 expressed a concern about how they are going to address sediment. You were
15 around when we developed the last list, which was 2002 list. And, you remember
16 the very hostile arguments that we had about sediment being not a pollutant, and
17 there were quite a few streams that were listed for sediment that were changed
18 to NVSS instead of sediment. Now, that might be calling a horse by the
19 same name, but these are all listed for sediment. I don't think sediment is a
20 specific pollutant and I don't think it was contained as the pollutant of
21 concern on the 2002 list. I have not gone back and double checked that.

22 MR. SCHROEDER: Well, we'll certainly take that under advisement
23 when we look at our next list, which is underway right now. In determining, you
24 know with the help of stakeholders and of course the commission as to what
25 pollutant to assign if any to those waters.

1 CHAIRMAN HERRMANN: It listed fifteen completed during 2005. Twelve
2 during 2004. I -- I think we should seriously consider you proposed what I'm
3 suggesting site-specific conditions should be applied in a heck of a lot of
4 these cases where we're imposing 10/15, 15/20 on small communities and that's in
5 excess by considerable amount of our standards. Our standards say that all
6 streams other than the Mississippi, Missouri River are losing streams or
7 special category streams you discharge 30/30. And the water quality limited
8 streams that you're talking about the TMDL's are based on a combination of that
9 discharge and combination with other discharges of the stream. But they're the
10 only dischargers of that stream that I fail to see how you derive a water
11 quality limitation to that extent.

12 MR. SCHROEDER: Well, I'm for bringing your thoughts back to
13 the office and discussing those with Ed and Rob. If there is a specific TMDL
14 that's been posted or drafted with a process we're developing waste load
15 allocations that you have any issue with, if I have the specific one I will
16 bring back if you wish a discussion of how the waste load allocation was
17 derived. So the commission has the benefit of knowing how we do that.

18 CHAIRMAN HERRMANN: Most of the TMDL's we'll quote the EPA formula.
19 QC plus QC divided by QC and if there's no numerical values put in to that
20 formula then stating in a formula is immaterial. I would like to see the values
21 that are put in there to derive particularly in a -- in a dry stream.

22 MR. SCHROEDER: Okay. Why don't we try to bring back an example.

23 CHAIRMAN HERRMANN: Oh, I can give you an example, but I'll do it at
24 our -- I'll do it over a beer how's that.

25 MR. SCHROEDER: Sounds good to me. (laughter).

1 COMMISSIONER PERRY: I can come and keep you too honest. (laughter).

2 But, I'll be quiet. If you do -- would you explain this permit in lieu of TMDL?

3 MR. SCHROEDER: Yes. It's -- we have a couple of options when a
4 water is impaired and the pollutant is identified as being -- that the source of
5 the pollutant has been identified as a point source that is permitted. The options
6 are, either correct the impairment by drafting a permit that leads to the
7 correction and having that permit issued so that all the conditions are in place
8 and enforceable to be able to compel compliance with the water quality standards.
9 Or the other option is to go ahead and write a TMDL. In the end, that TMDL
10 has to be reflected in the next permit issued. Both an issued permit
11 as well as a TMDL are enforceable documents. In the EPA's eyes, they
12 establish a path that has certain consequences. Having a permit issued

(End of Tape 3 Side A)

13 that has conditions in it will lead to eventual compliance or compliance
14 within a reasonable time. But, the permit has to be issued in the eyes of EPA
15 because without the issuance of the permit, you have no enforceable mechanism in
16 place. That more or less guarantees that the condition will be corrected in the
17 stream or water body. But, once you have a permit issued then EPA will
18 recognize that as something that takes the place of a TMDL.

19 COMMISSIONER PERRY: And, that would only be in the case where there's
20 one recognizable point source.

21 MR. SCHROEDER: Well, it could be several point sources but they
22 all have to be permitted point sources.

23 CHAIRMAN HERRMANN: My problem is the initial conclusion which derived the
24 basis for the conclusion.

25 MR. SCHROEDER: Right.

1 CHAIRMAN HERRMANN: Okay, any more badgering of Mr. Schroeder.
2 (laughter). Thank you Phil.

3 MR. SCHROEDER: Thank you.

4 CHAIRMAN HERRMANN: **Legal Report**, Bill Byran.

5 MR. BRYAN: I've been asked to give you update on a couple of
6 different topics. First, Chairman Herrmann asked for an **update on the situation**
7 **with respect to Bagnell Dam** there is no litigation concerning Bagnell Dam at
8 this time. The parties entered into a settlement that was approved by the
9 Circuit Court of Miller County about -- about twelve months ago. The parties
10 also entered into a re-licensing agreement that was filed with the Federal
11 Energy Regulatory Commission, which has the authority over how Bagnell Dam is
12 operated to generate safe and economic electricity. The Federal Energy
13 Regulatory Commission has made certain requests of Ameren UE over the past
14 twelve months, they -- I noticed today while we were in this meeting in fact
15 they made an additional inquiry for some more information, but I think that we
16 are getting towards the end of that process and we can expect the Commission to
17 either approve the new license consistent with the agreement of the parties or
18 to impose some additional terms and conditions or something like that. So that
19 will essentially put an end to the re-licensing issues of Bagnell Dam and change
20 the way it's been operated in a way that's good for the environment, good for
21 the production of electricity, and good for tourism at the Lake of the Ozarks.
22 Right now, there are two or three things that are going on in addition to the
23 re-licensing. First of all Ameren, even though their license hasn't been
24 approved yet and their not required to change their release regiment at the dam,
25 they've done that. In terms of the minimum flows that are released from the

1 dam, and that's a positive improvement for water quality in the Osage River
2 towards meeting the DO standard. There is also a DO enhancement committee that
3 meets regularly with DNR, Ameren, and Department of Conservation and Fish and
4 Wildlife Service, and they're looking at a variety of different ways to improve
5 the dam's ability to meet the dissolved oxygen criteria in the Osage River below
6 the dam. And, one of the leading ways to do that that the company is promoting
7 is to install two new turbines at the dam. That will be at the significant
8 expense I don't know the details of that and I don't know whether it will be
9 approved or seen as the ultimate solution to meet the dissolved oxygen criteria
10 for the dam. We have discussed with the company a variance and that -- that is
11 something that I know has been on the table at one time or another. The final
12 aspect of what is still going on with Bagnell Dam is the fish protection issue.
13 You may recall there was a catastrophic fish kill several years ago that kind of
14 got the ball rolling on the litigation and the -- and became an issue in the
15 re-licensing. And, one of things that I passed out to is -- is a chart that's
16 very simplistic version of what's going on down at the dam, right now. They're
17 looking at two or three issues. The most prominent one is the mesh size of a
18 net that would be stretched across the face of the dam to prevent fish from
19 passing the dam, passing the turbines through the power house or over the spill
20 way. And the issue is combining a fine enough mesh size to be protective of
21 fish so that you achieve that purpose but not pose a safety risk that it would
22 be too much drag on the net that it wouldn't be structurally sound and it might
23 interfere with the operations of the dam. So they're stuttering -- their
24 studying the swim speed of the fish, the sub-stability of the fish of being
25 entangled in the mesh size of the net, and -- and you show from that drawing

1 having the net at various elevations in the reservoir to see were it would be
2 effective and were it wouldn't be. But, it looks like there will be some sort
3 of a net put in place and mandated as part of the licensing process and at this
4 point it just hasn't been determined what that will be. But, the Department of
5 Conservation and the Department of Natural Resources and Fish and Wildlife
6 Service are all part of that fish protection process. The alternative is under
7 Federal Law that facilities like this if you can't insure fish protection you
8 have to have fish passage and that was a much more expensive undertaking to
9 provide fish passage of the structure of this -- of this age. That's were we're
10 at, unless there are any questions on -- on the Bagnell Dam situation. There's
11 no legal action pending, none anticipated. We hope to have the license approved
12 soon and the main attribute of the license will be that it will have a better
13 flow raceme below the dam for water quality, and fish and wildlife, and by
14 having a new guide curve a new model for the use of the water that flows into
15 the lake it will insure a more steady, reliable pool for the recreation season
16 on Lake of the Ozarks and still allow Ameren to efficiently generate
17 electricity. The other item that I was asked provided a **briefing on was the**
18 **Supreme Courts recent decisions concerning the breech of Federal Clean Water Act**
19 these appeals were analyzed the question of what -- what is meant by navigable
20 waters, what are the waters of the United States for purposes of the Corps of
21 Engineers regulation of the dredging and filling of wetlands under Section 404
22 of the Clean Water Act. The bottom line is that there are nine justices on the
23 Supreme Court it takes five justices to sign an opinion to have a majority of
24 the court to -- for that to be the law of the land. We didn't have that here.
25 We had four justices who signed a plurality opinion and then we had a descending

1 opinion that took a different view and then the fifth judge who swung the
2 decision in the case but did not create a majority, didn't make law per se who
3 -- who agreed with the plurality that essentially the Corps of Engineers hadn't
4 shown that based on the facts and the record below that these waters were waters
5 of the United States that they were navigable waters. The actual tests that
6 were developed and applied by the different opinions are outlined in the July 10
7 memo that I've provided to you. It's probably something that you'll want to
8 digest and think about a little bit, and if you have questions now, I would be
9 happy to talk about it or if you have questions later that may be more
10 appropriate because this is -- is fairly complicated. For our purposes here the
11 Supreme Courts opinions are -- are persuasive authority in Missouri Courts since
12 they don't interpret the Missouri Clean Water Law instead they interpret a
13 provision of the Federal Clean Water Act that is not found in the Missouri Clean
14 Water Law. They're not binding on this commission and on the laws that we
15 enforce in state court. They would be binding on a citizen suit that attempts
16 to apply the Federal Clean Water Law in Missouri or in a case in Federal
17 District Court that the Department of Justice or the EPA is involved in or that
18 our task forces are involved in. But, on the typical cases the ones that you
19 have referred to us today, these won't make any binding difference. These terms
20 are similar to some of the same terms that are seen in your statutes and so they
21 might be persuasive to a judge in Miller County for example who wants to know
22 what this phrase means he would certainly look at these cases and try to gleam
23 some knowledge from what the Supreme Court wrote about waters of the United
24 States. The one thing that is interesting is that there are -- there appear to
25 be five votes on the court to apply Justice Kennedy's significant nexus test,

1 which will require further clarification in the courts to know what that really
2 means, but essentially that if a wetland has a significant nexus to a navigable
3 water then it would be regulated by the Corps of Engineers under the dredge and
4 fill permits and in turn NPDES permitting and other -- other provisions of the
5 Clean Water Act would apply to it. In this case Justice Kennedy felt that there
6 wasn't sufficient evidence of a significant nexus. The four judges who
7 descending felt that there was sufficient evidence. So if on remand there is
8 further evidence presented it will come back to the court and the court will
9 decide whether or not there is a significant nexus or not. So far we've had one
10 Federal District Court that since these decisions were reached that judge did
11 apply the significant nexus test and found that there was no significant nexus
12 with the wetlands in question and navigable waters of the United States, but
13 this is something you will hear more about as this goes forward and if you have
14 questions let me know.

15 COMMISSIONER PERRY: I just have one. You're talking about the judges
16 and the plurality rejected what is characterized, as the land is water.

17 MR. BRYAN: Right.

18 COMMISSIONER PERRY: What is that?

19 MR. BRYAN: That is essentially, that's the way they chose to
20 characterize the Corps of Engineers traditional approach that if there's a
21 commerce clause is the only thing that limits the authority that if there's an
22 activity that takes place on dry land but is going to deposit fill material in
23 an adjacent water body we can regulate that activity and also the definition of
24 wetlands as lands that -- and -- and the definition of a stream is being within
25 the ordinary high water mark of a water body and the court said land is not

1 water when the congress used the word water to the United States they didn't
2 mean dry land. So, the plurality also suggested that the -- the Corps of
3 Engineers simply needs to apply some common sense and common usage as they go
4 forward with new definitions for how to -- for how to determine their
5 jurisdiction.

6 CHAIRMAN HERRMANN: The thing that most caught my attention Bill and
7 you didn't specifically mention it in your review that I can find was Justice
8 Scalia in his words in applying the definition to ephemeral streams, wet
9 meadows, storm sewers, and culverts, man made ditches, and dry orioles in
10 the middle of the desert the Corps has stretched the term waters of the United
11 States beyond parody. And, I think the same thing occurs with when we're
12 attempting in a lot of cases to define waters of the state. And, you do in your
13 last paragraph say Missouri law sufficiently clear to allow the state to
14 regulate continuous intermit ephemeral and sub-surface water bodies, and I'll
15 take exceptions with the ephemeral. I don't think the ephemeral is defined in
16 our regulations. So long as they are not entirely confined located completely
17 upon lands under common ownership or control, that's true. But, I think
18 Kennedy's words all though they're not anything more than his opinion, they are
19 not a part of the decision, but they define what I think is a common problem
20 between the United States and the state of Missouri in defining what are waters
21 of the state. What are waters of the United States? Do you have an argument
22 that I say ephemeral streams should be included in your definition of waters of
23 the state in the last paragraph.

24 MR. BRYAN: Well, my view is that the -- the general assembly here
25 in contrast to what congress did we haven't defined navigable waters. We have

1 an expressed statutory definition of waters of the state. There is in the
2 Federal Clean Water Act there's no definition of waters of the United States,
3 and so that's been up to interpretation and that's how the Corps got into to
4 trouble with their rulemaking and defining it very broadly. Here the general
5 assembly has established a definition of what waters of the state are, and it's
6 very broad and I think it is broad enough to include waters that are ephemeral
7 as long as their not isolated on a piece of property that's encompassed by one
8 land owner. But that's just a difference of opinion.

9 CHAIRMAN HERRMANN: Yeah. Can you give me a reference?

10 MR. BRYAN: The statutory definition of waters of the state in
11 644.010 (25).

12 CHAIRMAN HERRMANN: Well, I don't recall any --

13 MR. BRYAN: I think it says any waters.

14 CHAIRMAN HERRMANN: I don't think it defines ephemeral or defines the
15 limitation of not entirely confined on one person or group of person's property.

16 MR. BRYAN: No it doesn't. Right, that is correct.

17 COMMISSIONER TUPPER: It almost says anything but a farm pond.

18 MR. BRYAN: That's exactly right. It is very broad.

19 CHAIRMAN HERRMANN: Well, that's -- that's the point in which I have
20 considerable argument and I agree with Scalia interpretation or his stated
21 interpretation.

22 COMMISSIONER TUPPER: I didn't mean to say it was right on my decision
23 before --

24 CHAIRMAN HERRMANN: Well, that's what a lot of people would like to
25 read it to be.

1 MR. BRYAN: In practice were this comes up and were we see it
2 in our cases is when waste runs down a road ditch.

3 CHAIRMAN HERRMANN: Yeah.

4 MR. BRYAN: What point does that become waters of the state?

5 CHAIRMAN HERRMANN: Yeah.

6 MR. BRYAN: And, I think the department does a good job of
7 applying some common sense to that.

8 CHAIRMAN HERRMANN: I use the analogy of every interstate highway as a
9 center ditch down between the lanes. Now that carries stormwater. Is that a
10 stream? No, it's not a stream because the definition of a stream in our own
11 regulations says it's a body of flowing water.

12 COMMISSIONER PERRY: Well, it flows during a storm.

13 CHAIRMAN HERRMANN: No, this excludes.

14 MR. BRYAN: I think the overall lesson from this is that for
15 -- for decades now we have litigated about what is point source and we have
16 definitions that tell us anything from a manure truck to a skeet range, there is
17 even a decision that a Federal Circuit has held that a skeet range was a point
18 source because the shot deposited in the water body after the clay pigeon was
19 shot. That's been a focus of litigation and now the litigation is turning and
20 we've got some guidance from the Supreme Court in the past few cases about what
21 is the meaning of waters of the United States and this is something we've
22 focusing on in Missouri for sometime is what does waters of the state mean. So,
23 I think you can expect to see some -- some challenges to us in cases were we're
24 enforcing the law whether --

25 CHAIRMAN HERRMANN: Well, here's a part of my basis 10 CSR 20-2

1 subparagraph (74) the definition of stream, a defined water course which carries
2 water either continuously or intermittently and which is not entirely confined
3 located upon land owned, leased, or otherwise controlled by one person. And,
4 that says either continuously or intermittently, it doesn't say sporadically.
5 It says intermittently, and if you look up intermittently that will also give
6 you a definition of -- with regulatory and certain periods of the year. I got a
7 definition out the glossary of water and wastewater control engineering as well,
8 which essentially says the same thing. So I would like to pursue your best
9 opinion about what's the limitation of waters of the state. Where do we go from
10 a stream, to a ditch, to a dry ditch?

11 MR. BRYAN: We have -- we have a very lengthy memo that
12 basically outlines all of the cases around the country that have interpreted the
13 phrase waters of the state as they're defined in different states that I can --
14 I can have someone brush that up and we can share it with the commission if
15 you're interested.

16 COMMISSIONER PERRY: We want to know how many times, I don't know see
17 what he wants but I -- I was thinking how many times is it been decided in
18 Missouri.

19 MR. BRYAN: There have been a few cases and waters of the
20 state appears in other statutes other than the Missouri Clean Water Law but the
21 most detailed discussion of waters of the state is in a case involving the
22 Department of Conservation in fact and had to do with a slightly different
23 definition of that term. But, that's the -- it's been interpreted in a few
24 cases in Missouri not many. So that's why we've had to turn and look at what --
25 how its been interpreted elsewhere. But, I can do that that's a very simple

1 task I can do the Missouri cases for you and get that to you as the next meeting
2 without between now and the next meeting without any trouble.

3 COMMISSIONER PERRY: That would be the only one that would have
4 presidential value, right.

5 MR. BRYAN: Right. And, in that same time I will look at what
6 the -- at the regulation and compare it with the -- with the statute because the
7 statute is more broad than the regulation you've just read.

8 COMMISSIONER PERRY: So do we have --

9 CHAIRMAN HERRMANN: And when you -- when you go to the Federal law
10 their talking about getting back to your initial presentation navigable streams
11 and navigable I define as either involved in or capable of sustaining interstate
12 commerce and that's where the slight decision went down the tubes is the -- some
13 people tried to claim that water foul transit water foul landing on that water
14 body made it interstate commerce and the Supreme Court said no it is not
15 interstate commerce.

16 MR. BRYAN: That is correct.

17 CHAIRMAN HERRMANN: So do we have a similar definition in Missouri?

18 MR. BRYAN: There's a -- there's a Supreme Court opinion that
19 describes navigability in Missouri from the 1950's.

20 CHAIRMAN HERRMANN: Right.

21 MR. BRYAN: And, this -- it doesn't haven't the same
22 applicability here under the Clean Water Law because we don't refer to the
23 phrase of navigable waters under the Missouri Clean Water Law, I will also share
24 that information with you. All this is (inaudible) opinion.

25 CHAIRMAN HERRMAN: Yeah. Right. That's been a long argument.

1 MR. BRYAN: That's a long statement.

2 COMMISSIONER PERRY: And, what about ephemeral streams?

3 MR. BRYAN: I don't know if there is, I will look, but I don't
4 know if there is anything interpreting that because it's never been an issue.

5 COMMISSIONER PERRY: What that it was or wasn't?

6 MR. BRYAN: Right, that is was or was not covered.

7 CHAIRMAN HERRMANN: Ephemeral --

8 MR. BRYAN: It just hasn't been litigated.

9 COMMISSIONER PERRY: May I ask you why you included that here.

10 MR. BRYAN: Because our -- well our stature is -- is much more
11 broad than the Federal Clean Water Law and it has a specific definition of
12 waters of the state that begins by saying any waters and ends by saying except
13 those that are entirely confined on property owned by one individual. So the
14 question begins what are waters? And, that's a definition that -- does that
15 include ephemeral waters or not in my opinion it does because waters is -- they
16 could have said except ephemeral waters and waters entirely confined on the
17 property of one person but they didn't do that. It says any waters. I will
18 take a look at it specifically and get something to you.

19 CHAIRMAN HERRMANN: An ephemeral stream is not a water body. It is
20 the means of conveyance of stormwater in almost all cases. And if we are
21 worrying about water bodies, then an ephemeral stream doesn't qualify.

22 MR. BRYAN: Those are some like factual questions to me that
23 would be determined by a court or by this commission whether or not to refer a
24 case.

25 COMMISSIONER PERRY: So to use his example of the ditch going down the

1 middle of I-70 would that be owned by one -- now that's owned by one entity.

2 MR. BRYAN: I don't know how -- I don't know how the
4 I don't know if the Department of Transportation owns that or what
5 I just don't know.

6 COMMISSIONER PERRY: It's not really all that far crazy because these
7 are -- these are the issues that are likely to be litigated as time goes on.
8 And, what if there is some talk that Congress may change the definition in the
9 Clean Water Act, how would that in turn affect us?

10 MR. BRYAN: It would not except to the extent that they
11 attempted to preempt your ability to regulate the waters of the state. I think
12 that would be unlikely. That's traditionally been something that's within the
13 providence of the state since the Clean Water Act was adopted. But, they could
14 do that but I don't think it's likely.

15 COMMISSIONER PERRY: It strikes me as very confusing in the fact that
16 well I guess ours is stricter than the Federal Law which we can always do we can
17 not be less strict.

18 MR. BRYAN: That is correct.

19 COMMISSIONER PERRY: Because we're stricter but yet we have to go back
20 to EPA for everything to get approved. Go figure.

21 MR. BRYAN: I think I have your -- understand what you want
22 and I will get that to you next meeting.

23 CHAIRMAN HERRMANN: Well, I think Justice Scalia's comment in his
24 opinion was particularly relevant because our waters of the state are defined as
25 including waters of the United States lying within the state. And, if he's

1 saying well those should not be including then I'm saying okay then we shouldn't
2 either.

3 MR. BRYAN: The one point that I will make to that is that
4 Justice Scalia's opinion represents the views of four members of the court.

5 CHAIRMAN HERRMANN: Well, and it's a decision not relevant to the --
6 to the subject at hand. That's clearly an extension of his thinking process.

7 MR. BRYAN: I understand that.

8 CHAIRMAN HERRMANN: With which I happen to agree.

9 MR. BRYAN: I got that point.

10 CHAIRMAN HERRMANN: That makes five. That's a good point. (laughter).
11 Thank you, Bill. Okay, we will go to Mr. Galbraith is going to enlighten us on
12 the directors --

13 MR. GALBRAITH: Yeah, and I might ask in the interest of time if
14 Blane and Doug if you want to go ahead and get your presentation going while I'm
15 doing this we might be able to shave a few minutes off. Thank you Mr. Chairman,
16 I have five items to speak to you on today. First of all I just wanted to let
17 you all know that Commissioner Hardecke appointment -- re-appointment came
18 through I think in the last two weeks so congratulations, Ron. Also, on
19 personnel wise they have made a selection for the replacement of Leo Alderman
20 who as you know passed away untimely this Spring. Art Spratlin, S-P-R-A-T-L-I-N
21 who has been the director of Air and RCRA since there was Air and RCRA
22 at EPA has accepted the job of the director of the water -- wastewater and
23 pesticides branch at region seven so he'll be replacing Leo Alderman or filling
24 that position I should say. I don't know the effective date it may be effective
25 now I am not sure I didn't get the -- I didn't get all of the information but

1 for those of you who have worked with Art or know of Art in the past, I think
2 you'll agree with me that that's a good choice.

3 CHAIRMAN HERRMANN: I think for the -- since the commission has become
4 acquainted with John Delashmit I would like to elaborate on what his
5 position is.

6 MR. GALBRAITH: Okay, John is one of four -- five branches within
7 the Division of Water -- Waste Water and Pesticides and his -- his branch is
8 basically water quality standards so he takes care of all standards and TMDL
9 issues. He's kind of -- a roughly analogist of Phil's position within -- within
10 region seven and that's what he was doing before so he will continue to do that,
11 so and I think we will continue to see him regularly at our meetings. You had
12 asked me Chairman to provide a brief **update on chip mills** some of you on the
13 commission will remember when chip mills were -- were quite the hot topic. Many
14 -- many of -- has been eight years or more since there was a chip mill
15 commission and it's been a while. And, so the Chairman asked me to -- to sort
16 of provide an update and what did we know about water quality impacts as a
17 result of chip mills and -- and cutting was specifically the -- the cutting of
18 -- of -- of -- of timber and what kind of water quality impacts we were aware
19 of. I did not do an exhaustive bit of research into this but I did ask a few --
20 a couple of people who I thought would be fairly knowledgeable of the current
21 state of affairs. One being Gary Gaines, who directs our Southeast Regional
22 Office in Poplar Bluff and also John Tuttle, of the Missouri Department of
23 Conservation who stays abreast of chip mill issues on behalf of that agency. So
24 the information that I received from those two individuals is as follows. Gary
25 informs me that there are two high capacity chip mills in the Southeast part of

1 the state. The Mill Spring chips incorporated at Mill Springs and the Missouri
2 Fiber Chip Mill at Scott County Port Authorities south of Cape Girardeau.

3 CHAIRMAN HERRMANN: Their both still operating?

4 MR. GALBRAITH: Their both still operating, although he indicates
5 that they are both operating at less than half capacity because of the low
6 demand for paper. I believe there is a third chip mill in Kentucky that is
7 often supplied out of Missouri as well. Gary, has not witnessed or gotten any
8 complaints of big clear cut sites or heard complaints of -- of wide spread
9 cutting or water quality impacts in sometime, he indicates for -- in a number of
10 years of course we used to get a number of -- you know many frequent complaints
11 from individuals and organizations about that. But, he indicates that they have
12 not received any in a long time do in large part to the reduced amount of
13 cutting. The information that I received from John Tuttle of MDC, confirms
14 those findings. He is not aware of any large scale clear cutting going on at
15 this time to feed chip mills, also he was not aware of any complaints about
16 water quality issues. So, again this -- your request chairman came a couple
17 days before I left for leave so that was the extent of the research that I had.
18 But, I didn't get any indications that there were massive water quality
19 problems.

20 CHAIRMAN HERRMANN: When this was a hot topic I think there were three
21 of them operating. The one in Joplin I think was a very small operation. Is
22 that one extinct or do we know? Do you know Jim ?

23 COMMISSIONER TUPPER: I don't think it's operating.

24 MR. GALBRAITH: None of my sources indicated that --

25 CHAIRMAN HERRMANN: Well we're all direr consequences that we're going

1 to incur if chip mills continue to operate in the state of Missouri and I had
2 not heard difficulties to our complaints and I wanted to as best we could verify
3 that condition.

4 MR. GALBRAITH: Yes, I think you know based on the little amount
5 of information that I was able to glean that seems to be the case that they're
6 not running at capacity and the demand is low so you wouldn't see the type of
7 cutting that was -- that was predicted to be associated with you know having
8 four or five of these mills running at you know full capacity. I think that was
9 kind of the scenario back you know like I'm calling it eight years ago it may
10 have been more or less but.

11 COMMISSIONER PERRY: It was five.

12 MR. GALBRAITH: It was five.

13 COMMISSIONER PERRY: It was the issue that brought me on. It was the
14 question the Senate asked me when I came on the commission.

15 MR. GALBRAITH: Okay.

16 COMMISSIONER PERRY: Not that their leaving and my coming on the water
17 commission was not necessarily --

18 MR. GALBRAITH: All your fault.

19 CHAIRMAN HERRMANN: You got influenced. (laughter).

20 COMMISSIONER PERRY: It's no longer an issue. Anything else you want
21 me to think about.

22 MR. GALBRAITH: With regard, one issue that I've been
23 contemplating for sometime an idea that I just want to float by the
24 commissioners for their consideration. We don't need to make a decision today,
25 but from time to time there are a number of highly technical complex issues that

1 -- that come before the commission in the disguise of voting issue or a policy
2 issue and you always kind of hear the end of the story and you know it's sort of
3 like reading the last chapter of a book and you don't get the benefit of the
4 back story. And, I think for example the discussion today on water quality
5 based effluent limits is a good example. TMDL's is another example. You know,
6 we sort of come to you with -- with sort of the result and ask you to bless the
7 result but you don't have maybe all of the background that would be helpful to
8 you in considering that. A lot of city councils and a lot of other governmental
9 bodies have regular workshops apart from business meetings and I wondered if an
10 occasional informational meeting or -- or workshop would be beneficial for the
11 Clean Water Commission. I am not thinking of anything very frequent maybe twice
12 a year, maybe a Fall and a Spring workshop where we could sort of cue up a
13 number of technical issues and do more of an educational thing that you didn't
14 have to have like the pressure of making a decision on something right there and
15 that's your only opportunity to get educated on it. These of course would be
16 public meetings open to open meetings law so we would -- we would advertise them
17 and -- and notice them and have an agenda ahead of time. But, there would
18 specifically for the purpose of education and it wouldn't be, I mean
19 I would presume that our staff would prepare the materials but it
20 would not be exclusive to our staff. I think we would invite others who have
21 technical expertise in the consulting community or elsewhere in the
22 environmental community, other agencies as were sort of doing -- getting geared
23 up to do now. So, I would like you to think about that. We could come
24 together with a more solid proposal at our next meeting.

25 COMMISSIONER PERRY:

You know we used to do this sometimes.

1 MR. GALBRAITH: Okay.

2 COMMISSIONER PERRY: And, we did it the evening before our meeting.

3 MR. GALBRAITH: Okay.

4 COMMISSIONER PERRY: That would of course make sure everybody was here
5 on time the next morning. (laughter). But, the ones we had were extremely
6 informative and that was a nice time frame because we're here anyway.

7 MR. GALBRAITH: Because you are already making the trip.

8 COMMISSIONER PERRY: That's sort of an evening thing.

9 MR. GALBRAITH: Okay. So you would rather -- you would rather
10 take the evening before our regular schedule meeting rather than come during the
11 off month, you know between meetings.

12 COMMISSIONER PERRY: Well, I think I'm just thinking in terms of
13 efficiency even for the matter of the mileage being spent.

14 MR. GALBRAITH: Sure. Sure, well I think you're volunteers and
15 your time is -- is at a premium so I would -- I would tend to do whatever was
16 most respectful of your time.

17 CHAIRMAN HERRMANN: Perhaps be gauged by the magnitude of the concern
18 or the subject.

19 MR. GALBRAITH: Or the topic.

20 COMMISSIONER PERRY: Like we have those tours sometimes.

21 CHAIRMAN HERRMANN: Yeah.

22 MR. GALBRAITH: Right.

23 COMMISSIONER PERRY: In conjunction with the meeting.

24 COMMISSIONER TUPPER: Some required more time than others.

25 CHAIRMAN HERRMANN: Yeah, right.

1 COMMISSIONER PERRY: You know all those motel rooms that I've saved
the

2 state all these years. (laughter).

3 MR. GALBRAITH: Well, I am thinking about a significant chunk of
4 time. I've been thinking three, four hours to -- to really do justice to some
5 of these. So I don't -- I don't know if that's -- if that would enter into your
6 decision. Or -- or there's a couple of ways we could do it. We could sort of
7 chop it up into smaller bits and do a little bit in conjunction with each
8 commission meeting. I just think if we're able block out large chunks of time
9 on a -- on a less frequent basis we might -- we might be able to get a more --
10 just might be a better educational process.

11 CHAIRMAN HERRMANN: I suggested to Ed that that's the reason that we
12 started rotating the meeting around various parts of the state was hopefully to
13 get to not only let the -- the local people make ourselves available to them,
14 but to also educate ourselves on the local problems. Cause, the problems in
15 Southwest Missouri aren't the same as they are in Northeast Missouri or in St.
16 Louis or Kansas City. If we rotate around hopefully we get some of those
17 questions resolved in our mind and that would be the time the day before the
18 meeting to do both.

19 COMMISSIONER PERRY: Or so we don't loose the whole work day the day
20 before. That's why I was thinking that 6 to 9 p.m. time frame.

21 MR. GALBRAITH: Okay.

22 COMMISSIONER PERRY: I think I'm the only one who is not here at that
23 time frame anyway so I'll come.

24 COMMISSIONER EASLEY: If you're not in Brazil or someplace like that.

25 CHAIRMAN HERRMANN: A happy hour discussion period.

1 MR. GALBRAITH: Happy hour discussions. Open drinking law.

2 Well, why don't we do this, why don't we
3 tentatively plan to do something either at our September meeting or November
4 meeting? And, I'll work with staff on putting together sometime of agenda.
5 I'll run it past you Chairman, and we'll make sure that it gets noticed
6 appropriately.

7 CHAIRMAN HERRMANN: September meeting would be fine with me.

8 COMMISSIONER PERRY: Do you have those dates? I am sorry it's probably
9 in the agenda and I didn't remember.

10 COMMISSIONER EASLEY: September 6th and November 1st.

11 MR. GALBRAITH: Yeah, September 6th and November 1st.

12 COMMISSIONER PERRY: Thank you.

13 COMMISSIONER EASLEY: You are welcome.

14 MR. GALBRAITH: We're in Kansas City for the September meeting is
15 that correct?

16 CHAIRMAN HERRMANN: That was tentative.

17 MR. GALBRAITH: Is that what we --

18 CHAIRMAN HERRMANN: That was the tentative agreement we were going to
19 go to Kansas City.

20 COMMISSIONER PERRY: (Inaudible) with Brush Creek.

21 MR. GALBRAITH: I'll bring Kayaks.

22 CHAIRMAN HERRMANN: We already assessed to swimming. Potential for
23 Brush Creek at our last visit.

24 COMMISSIONER PERRY: We'll throw you in and see if it's ephemeral or
25 not. (laughter).

1 CHAIRMAN HERRMANN: No, Brush Creek's not ephemeral, but it's sure as
2 hell not swimmable. (laughter).

3 COMMISSIONER HARDECKE: November 1st or 8th?

4 COMMISSIONER PERRY: September 6th.

5 MR. GALBRAITH: September 6th and November 1st.

6 CHAIRMAN HERRMANN: I don't think we finalized that Kansas City, but
7 we were supposed to be in Kansas City this month, but because of the potential
8 for having the 303(d) list we moved it to Jeff City and we tentatively agreed we
9 were going to do September in Kansas City, right.

10 MR. GALBRAITH: Yeah. Is there any -- would there be an
11 impediment to that as far as you know, Malinda? We will have the final decision
12 on the Administrative Hearing Commission Rule but I don't think that's big
13 enough to prevent us from a change of venue.

14 CHAIRMAN HERRMANN: No. As far as you know you only had one
15 commenter. Do we go out of order and consider the November meeting at this
16 time?

17 MR. GALBRAITH: No, we can certainly do that.

18 CHAIRMAN HERRMANN: I think we had a suggestion for -- in a few years
19 since we've been to Branson --

20 COMMISSIONER PERRY: Of course I would have to come up the night before
21 and have to spend the night in a hotel I don't think I can do that in my morning
22 time frame.

23 MR. GALBRAITH: Okay.

24 COMMISSIONER TUPPER: The hotel will be done by then.

25 COMMISSIONER PERRY: So I would have to come -- that's a good time to

1 have one of those sessions because I have to be there.

2 MR. GALBRAITH: You'd have to be there.

3 COMMISSIONER PERRY: The night before. In the past when we were in
4 Kansas City there is been some -- (inaudible).

5 MR. GALBRAITH: It's not till like the -- the mark of the Kansas
6 City Chamber Environmental. Yeah, it's not it's in October I believe this year.
7 Didn't we check into that. Kansas City Chamber it wasn't going to be anywhere
8 close to our normal schedule. I think it was going to be like early October,
9 so. We have to have this meeting on this date because of the a -- because of
10 the rule. We have to make a decision on it.

11 COMMISSIONER PERRY: Do one of those informational sessions --

12 MR. GALBRAITH: The night before our September 6th.

13 CHAIRMAN HERRMANN: Yeah. Yeah.

14 MR. GALBRAITH: Let me -- let me get with staff before committing
15 to that. Because we've got to -- got a 303(d) list to get together by then and
16 some other -- we've got a lot of things in the hopper right now and folks are
17 out doing UAA's and low flow surveys. So let me -- before I commit give me a
18 chance to talk to Phil and -- and I can get back with you Chairman on the
19 September meeting whether that would be wise to commit our staff to doing that
20 in September as opposed to November. Would that be okay.

21 CHAIRMAN HERRMANN: So why don't we'll work towards that.

22 MR. GALBRAITH: Work towards that, yeah.

23 CHAIRMAN HERRMANN: Yeah.

24 COMMISSIONER TUPPER: That Veterans blow-out is early in November in
25 Branson, I don't know whether it's that week or the next week. That -- that is

1 a mob.

2 MR. GALBRAITH: Okay. Why don't we check with the Branson Chamber
3 of Commerce and see what's going on at that time and make a recommendation and
4 then we will work it out with you Tom, whether it would be timely. Would that
5 be okay?

6 CHAIRMAN HERRMANN: All right.

7 MR. GALBRAITH: I did have one last item to bring to your
8 attention. It's not a very happy piece of news but I think you all know that
9 Becky Shannon for a time struggled with -- with cancer and that she had been in
10 remission and back to work for sometime and unfortunately she's not -- she's no
11 longer in remission and we learned a couple of weeks ago from her that it's not
12 likely that she'll be able to return to work with this barring some miraculous
13 turnaround in her condition. And, they have engaged hospice and her -- she and
14 her husband have done so and it -- it looks like -- so keep Becky and her family
15 in your -- in your thoughts and prayers and if you wish to send her any
16 messages, Malinda or I will be happy to forward those. I know she would like to
17 hear from you.

18 CHAIRMAN HERRMANN: I was going to suggest to get a commission card
19 through Malinda. Regulated to us as a commission I thought that would be more
20 appropriate rather than individually.

21 MR. GALBRAITH: Yes. She -- her, you know she's in, you know
22 Becky she's in good spirits and always very heroic and I don't think she's in a
23 lot of physical pain just a lot of fatigue. But, it just seemed like, I think
24 her body is just not going to recover from -- from this again barring some --
25 some miraculous reversal. Please again keep her in your thoughts and prayers

1 and we'll do that, Chairman. Okay, thank you.

2 CHAIRMAN HERRMANN: I got fatigued about the fourth hole yesterday and
3 I haven't recovered, yet. (laughter). That's a sign. Okay, presentation on
4 unclassified waters, Blane Heuman and Doug Novinger.

5 MR. GALBRAITH: Commissioners Easley and Perry do you guys want to
6 come down here. Can you see from where you're at?

7 COMMISSIONER PERRY: Yes, I can see.

8 MR. GALBRAITH: Can you see okay. Cause we can move some chairs
9 around, okay.

10 MR. NOVINGER: Good afternoon. Would any of you mind if I just kind
11 of shift the podium this way a little bit so I can reach the computer?

12 MR. GALBRAITH: That's fine.

13 MR. NOVINGER: Thank you I want to -- want to ask the commission
14 and tell you how much I appreciate the opportunity to share some information
15 with you this afternoon. And, you'll find (inaudible) to some of the topics
16 that you've been discussing today and also in the near future as you talked
17 about establishing water quality criteria and unclassified stream reaches in
18 the state of Missouri. The first thing that I'm going to take in my presentation
19 is to emphasize the linkages that exist between headwaters and points down
20 streams -- downstream and stream systems. And, I think this is critical in
21 understanding the flow of energy materials and organisms from headwaters and the
22 role that they play in fueling and determining characteristics of the rest of the
23 water shed, points downstream and that stream system. There are two items that
24 I want to address in my presentation. The first is that streams are indeed
25 continuous systems. The most fundamental level their conduits and they have

1 longitudinal gradient that shift it with changes in environmental conditions in
2 the watershed. They change incrementally in many cases, and it helps to try to
3 view them in that way. Even though we often have to impose somewhat arbitrary
4 classification systems on them, categorical types of systems that help us to
5 manage stream systems. It helps to remember a lot of the processes that operate
6 in streams really know no clear boundaries. So we are talking about in general
7 continuous systems. Second point is that headwaters including reaches that are
8 sporadic or intermittent flow are often critically to maintaining species
9 diversity for the entire stream system. They also can have a very important
10 effect in determining downstream habitat and the community characteristics of
11 the aquatic organisms that occur further downstream. Just to kind of help start
12 thinking about streams in a continuous matter I want to use an analogy to a
13 continuous highway system. And, this roadway or highway system starts with
14 maybe a few country lanes or some driveways that intersect and as we travel down
15 this roadway it becomes larger and more frequently traveled eventually we add
16 some entry ramps and exit ramps, multi lanes, and the diversity of vehicles and
17 travelers increases and finally we end up with a super highway, multi lanes or
18 traffic, traffic moving into and out of the highway system, and a great deal of
19 diversity with the travelers and types of vehicles that are traveling on this
20 system. Stream systems are comparable even from humble beginnings in systems
21 that stream reaches that are occasionally wet, intermittent systems as they
22 progress down stream gaining slightly more water as tributaries intersect with
23 the main stem to eventually becoming a much larger and eventually mighty river.
24 We still see this same movement of materials energy and organisms from up stream

(End of Tape 3 Side B)

25 ordinance of maintaining linkages from the headwaters and points further

1 downstream. Because anything that happens in these headwater areas is what is
2 going to help determine what's happening further downstream just like with that
3 highway system, whether you begin your journey here or here or here eventually
4 your going to end up here. Ecologists have long struggled with trying to put
5 this perspective into an understandable theoretical framework that allows them
6 to make predictions about what happens is you travel down a stream system and
7 probably the best and most useful product in that endeavor has been the river
8 continuum concept. This was a -- a theoretical framework presented by Vanough
9 DuVall (sic) in 1980 and very simply it was based on the premise that from
10 headwaters to mouth the physical variables within a river system present a
11 continuous gradient of physical conditions. It recognizes that as you move from
12 upstream to downstream things change in a predictable manor. That includes
13 changes to the biotic conditions, the chemistry involved in the -- in the water
14 quality of the system, and also to the biological community, and the
15 characteristics of those communities as you move downstream. Just to illustrate
16 this concept for you is a fairly idealized illustration of how this works. The
17 river continuum concept was developed for temperate systems and that's certainly
18 where it is applied most often and works the best. But, this illustration shows
19 a -- one of those idealized stream systems starting from a very narrow channel,
20 heavily wooded, and then progressing to a much wider stream system, and along
21 this side of the figure you can see stream size, which is indexed by stream
22 order. Along the bottom here you can see increasing stream width. And, the
23 first thing I want you to notice is that there are suites of -- of species and
24 there are different materials that enter the stream as energy sources and those
25 energy sources are utilized by particular groups of species that helps determine

1 the communities that exist there and they shift as you go downstream. We talked
2 first about headwater streams and these are generally considered first to third
3 order stream reaches. As I mentioned these are heavily shaded they're usually
4 higher gradient and -- and important feature of headwaters is that they are
5 marked by course organic matter inputs, things like leaf fall, litter fall that
6 are energy sources that enter from outside the stream. It's an important
7 characteristic of headwaters is that they're highly dependent on energy entering
8 from outside so all of the land use activities, landscape features that occur in
9 the upper parts of water sheds, that's why they are critical to determining what
10 happens in headwater streams because those stream systems are simply highly
11 reflect the conditions that are present. They're a specialized group of
12 invertebrates that are adapted to utilizing energy sources like leaf litter. We
13 find that invertebrates that are shredders tend to dominate the aquatic organism
14 communities in those areas. And, basically their messy eaters, shredders chew
15 up a lot of their organic matter and a lot of it gets torn up and is simply
16 passed downstream. Even what they process is passed downstream after it's had
17 some initial processing in the guts of these invertebrates and that's an
18 important feature of the energy processing system and the food chains that
19 develop as you move downstream. And, these systems often ground water provides
20 some stability and species diversity is low because the variation in conditions
21 there is also low. So you simply have a smaller number of species that can fit
22 into those niches. As we move downstream into the middle reaches of the stream
23 and these are generally first to sixth order in size getting free sunlight as
24 this canopy coverage over the stream opens up the stream becomes wider and that
25 allows for vegetation growth and plant growth to occur in the stream. So you

1 get a whole suite of organisms that are adapted towards exploiting those kinds
2 of resources. A group of insects that are grazers that scrape the algae and
3 other small aquatic plants from the surfaces of rocks, and then fish and other
4 species that utilize those insects as food. So you get increasing amount of
5 diversity in the habitat and that leads to an increasing diversity in the types
6 of species that occur there. The river continuum concept goes on to make
7 predictions about what happens in large rivers. I am not going to talk much
8 about that here because I think our focus is more on headwaters and smaller
9 streams. But, this has been a very useful paradigm and it's one that is very
10 much still in use today. The river continuum concept was based on stream water
11 and in fact there are several ways to classify streams and again I would
12 emphasize that these are going to be arbitrary ways of classifying streams and
13 are often limited by the amount of information that we have. Stream order
14 depends on the number and size of connecting tributaries; I will show you an
15 example of that in a second. Discharge of course the measure of flow in the
16 stream that varies widely with the seasons and across years often we don't have
17 information on discharge and so that can be a limiting factor. Watershed area
18 is another measurement that correlates with the size of the stream and now that
19 we have fancy geographic information tools available we can start using that
20 metric more often. Combinations of these are possible the main point is they
21 all reflect something about the size of the stream. As an example of stream
22 order and I won't go into a lot of detail except (inaudible) stream order is one
23 that is commonly seen and is simply calculated by for example these two
24 headwaters stream reaches are considered first order and when they meet you form
25 a second order stream reach and when that second order meets another second

1 order stream reach it becomes third order. That is perhaps the most common way
2 of measuring or indexing streams by size. EPA has also offered definitions for
3 different types of streams. Ephemeral streams have been defined as flowing
4 during or immediately after periods of precipitation and in general less than
5 thirty days per year. Intermittent streams is flowing only during certain times
6 of the year and so a seasonal flow and intermittent stream would usually last
7 longer than thirty days throughout the year. And then perennial streams of
8 course flow continuously. So this addition of a time component is -- is
9 important to understanding flow and streams. And, I think that's really
10 critical to understand that streams can flow in both time and space for example
11 you may have a stream system that is dry throughout much of the year except
12 during the wet part of the year that may be considered an intermittent stream.
13 You may also have a stream channel that appears to be composed of isolated pools
14 and it contains those pools throughout most of the year that may still be
15 considered an intermittent stream. So I want to move on to the second point in
16 my presentation and I want to focus a little bit more on these headwater streams
17 and why they are critical to maintaining species diversity and also to
18 determining downstream habitat and aquatic organism community characteristics.
19 Ephemeral streams and going back to the EPA definition here they can be
20 important conduits during brief periods of flow because they're a transportation
21 avenue. They can support aquatic or semi-aquatic species communities that are
22 adapted to take advantage of such conditions. For example amphibians may use a
23 very briefly wetted habitat in order to lay eggs, some invertebrates also use
24 those wetted habitats in order to complete their reproductive life cycles.
25 Intermittent streams also may support aquatic communities isolated habitats year

1 round these headwaters can also provided remnant pre-disturbance habitat that
2 are important to rare and endangered species. Often times these headwater areas
3 are overlooked when development was going on in other parts of the watersheds.
4 So some of our species of conservation concern are restricted to headwater
5 stream reaches. As I mentioned the isolated pool type habitats and I'll show
6 you and example of that in a moment those are important for providing refuges
7 during periods of drought when other parts of the stream may be dry and while
8 their isolated all of the biological activities are still occurring in those
9 isolated pools, and when the next rainfall comes those pools are flushed and
10 that productivity is washed downstream and used to fuel other organisms and
11 communities further downstream. How do organisms re-inhabit stream reaches that
12 have been dry or apparently dry? There is an area of the stream bed in some
13 stream reaches as you progress far enough downstream that is termed the Hyporheic
14 Zone this is a portion of the stream which is below the stream bed itself
15 it is the loose gravel under the stream bed that extends sometimes down many
16 feet and that area can retain moisture and remain wetted for a significant
17 amount of time and it may also have a connection with the ground water such that
18 it is wetted year round even when parts of the stream bed itself are dry. And
19 aquatic invertebrates utilize that habitat there's a whole host of invertebrates
20 in fact that live in the interstitial spaces between the gravel. They can seek
21 refuge in some of those areas when the stream itself dries and when it is wetted
22 again they can reemerge to complete their life histories. In addition I don't
23 have the figure for it here wetland areas marshes that are adjacent to the
24 stream can act as important sources for organisms when the stream bed itself may
25 not be flowing those wetland areas provide refuges and -- and -- and sources of

1 -- of animals and organisms when the stream is wetted again they re-colonize the
2 stream reach from those areas. As I mentioned the isolated pools in -- in
3 intermittent streams can offer habitat for aquatic species and this is a good
4 example I think of a stream which is just to the West of us here near the town
5 of Tipton. This is headwater reach first order, and this is an isolated pool
6 and apparently dry channel between this pool and another pool that's down on the
7 bend. And, when we sampled those pools we found a number of fish species. I
8 probably sampled ten fish species there and including endangered Topica Shiners
9 they appear to be like several others species adapted towards utilizing
10 these habitats, which are connected for only parts of the year. The Black Nosed
11 Shiner is another of our species of conservation concern that also utilizes
12 similar habitats. And, the thing that allows these habitats to be inhabited by
13 fish is that -- and other aquatic organisms that require sufficient water
14 quality is that there is a sub-surface flow between these pools with water
15 percolating through the gravel streambed and through that Hyporheic Zone
16 And, I think understanding that is very important if a person were to have
17 simply looked at the stream reach and focused on the dry parts of the reach the
18 may not have realized that there is in fact a great deal of diversity present in
19 these isolated pools. Just to summarize a few of these features of intermittent
20 stream reaches that I think are important that sub-surface flow between isolated
21 pools is what is important to maintaining water quality. Environmental
22 conditions in habitats such as this can fluctuate really very widely with
23 temperature DO and dynamic concentrations going between extremes. In general
24 these types of habitats support species that are tolerant of these --
25 environment -- or environmental extremes and conditions and therefore

1 communities that are of limited diversity and the upside of that is that that
2 often includes unique species which are found no where else. As for this reason
3 that intermittent waters, stream reaches, headwater streams that have these
4 types of habitats really need to be considered carefully because they can house
5 their unique bio-diversity and something that we're very interested in trying to
6 maintain. Of course there are exceptions to the general rule the river
7 continuum concept in some of our classification systems don't deal well with
8 karst systems and losing streams if you have an ephemeral or intermittent stream
9 that loses flow to karst systems with a fairly direct transfer to ground water
10 the stream bed itself may stay essentially dry throughout the whole year except
11 for during the time when there's a heavy rainfall. And, that water is being
12 transferred directly to the underground and of course that's of great concern
13 because many types of pollutants in the water are going there to. We need to
14 make sure that we have protections in place for those systems if they don't fall
15 through the cracks. Some of our endangered species like Ozark Cave Fish and our
16 dependent on those habitats let alone are drinking water and irrigation water
17 and lifestyle water sources are dependent on ground water quality. In then
18 second Mississippi River Alluvial Basin Waterways in the boot hill and other
19 highly altered low gradient systems do not conform well with the river continuum
20 concept because there is not a large distinction in gradient as you move down
21 stream so you don't tend to see the -- the strong gradients in -- in diversity
22 and environmental conditions occurring that you might see in a more typical
23 stream system. Never the less we need to find ways to maintain some protections
24 on systems like that because they often house species of concern. There are
25 numerous species of concern in the boot hill, aquatic organisms that are adapted

1 towards using those low gradient stream systems. So just to wrap up what I've
2 presented to you and go back to those first two points and add another thought
3 streams are continuous systems source to mouth regardless of the classification
4 system that we choose to apply it to, and I just think its important to keep
5 that in the back of your minds as you deliberate water quality criteria for
6 these systems. We're often dealing with a very incremental change in conditions
7 and simply because we categorize the stream reach as A, B, or C the fit is not
8 always very good and the boundaries between our categories are often fluid so
9 that in any given season or across years those boundaries shift up and
10 downstream and may be difficult to determine. Also, intermittent reaches offer
11 critical habitat for native species and support unique diversity. And, as I
12 mentioned the boundaries between reach types are fluid and that some types of
13 streams are just simply not a good fit to our conceptual models but never the
14 less we need to find ways to protect water quality in those stream reaches.
15 Thank you for your attention that's my presentation. I will be happy to
16 entertain questions.

17 CHAIRMAN HERRMANN: Can we have some lights someone. Thank you.

18 MR. NOVINGER: No problem.

19 CHAIRMAN HERRMANN: Yeah, I am interested in your -- your talking
20 about headwaters -- headwaters meaning there is a source of water to this stream
21 system that you're talking about. Your analogy of the road systems leading from
22 a country lane down through the interstate, multi-complex urban highway and I
23 guess to draw another analogy would that system extend up past that country lane
24 that might go to a farm house or two farm houses to perhaps a logging road or to
25 perhaps a -- a cattler well known for traveling the same path over and over

1 everyday, every time. Would it include that as a part of it? And, my analogy
2 is that dry streams particularly ephemeral streams are not a part of the stream
3 concept and in fact don't even fit the definition of stream by any measure of
4 engineering nor definition of -- of legal definition of terms and also common
5 definition of terms by the dictionary. But, dry streams are not a part of the
6 continuing system as you -- as you described.

7 MR. NOVINGER: I think there are lots of ways to decide maybe
8 where to draw the line that aren't always very obvious.

9 CHAIRMAN HERRMANN: That's exactly my point.

10 MR. NOVINGER: And how we define ephemeral streams is probably
11 very critical to, for example EPA's definition of a stream
12 reach it flows for less than thirty days per year. It holds water for
13 twenty-nine days out of the year. It may be long enough so aquatic organisms
14 can utilize that habitat.

15 CHAIRMAN HERRMANN: Well, if it holds pools for most parts of the year
16 even though it goes dry it's still a Class "C" stream according to our
17 definition. If those pools dry up and if there's, I think there is a definition
18 some place in our regulations about 96 hours or someone's definition of 96 hours
19 being dry then you don't worry about aquatic life in those drainage ditches and
20 dry creek beds which don't carry water. And, that's -- that's the difficulty I
21 have with this whole unclassified stream definition where are you going to draw
22 the line between what's part of a drainage system and what's part of a stream
23 system. And, I think they're to separate and distinct. The -- I was interested
24 in your gravel bottom definition of habitat aquatic life and I thought well down
25 in the boot hill that's different. Well, you explained the difference there,

1 but also up in the prairie areas and the North part of the state there's no
2 gravel bottoms in those streams. There's no gravel within thirty to fifty feet
3 of the surface. Those streams are dry and you got what amounts to clay or mud
4 bottoms but indicating a significant presence of water, then you don't have a
5 stream in my mind. You don't have habitat in my mind.

6 MR. NOVINGER: Whether or not there is a Hyporheic Zone
7 present certainly depends on the type of geology of where the stream is located,
8 and in some cases that's certainly right. If you have a bedrock bottom or a
9 hardpan clay bottom then you are not going to have habitat for invertebrates or
10 organisms that would inhabit a Hyporheic Zone.

11 CHAIRMAN HERRMANN: My principle difficulty in getting it through my
12 German skull is where are we going to draw the line when we see unclassified
13 stream. If we say stream first of all it has to fit this definition of a stream
14 either by our regulations or by standard engineering terms and dry streams, dry
15 creek beds, dry water courses don't meet that definition. If it carries water
16 for a portion of the year and it maintains pools then fine it's classified. If
17 it flows continuously fine it's also classified. But, and I will also grant some
18 of this performance of this argument the fact that there are a lot of streams in
19 this state which probably should be qualified classified. Stream segments I'm
20 sorry which probably should be classified but I will also take them out to places
21 where we do have classified streams that should not be classified.

22 MR. NOVINGER: I think that will be one of the challenges that
23 you face. Deciding how much flow constitutes and how long of flow duration
24 constitutes a stream and the answers may differ depending on whether you're
25 asking a biological question or a manageable question. And, the best that I can

1 offer right now is some of the biology that certain organisms do.

2 CHAIRMAN HERRMANN: And, I appreciate that and as I told Ed that those
3 of us who missed the last stakeholders group could benefit by hearing your
4 presentation. I certainly think I gained some appreciation and some knowledge
5 the biological considerations. I am still hung up with the physical and even
6 the extent of the biological considerations when you get up into the dry
7 streams. How long can that aquatic life sustain itself in a dry watercourse of
8 a drainage ditch along the highway out in ten buck two some place?

9 MR. NOVINGER: I think some degree of -- of you know wetness is
10 required for a lot of those organisms although as I mentioned for the organisms
11 that find refuge in the sub-straits it doesn't have to be a lot of moisture
12 there. And, the amount of time and the amount of moisture I can't tell you for
13 sure, but that's the critical feature that there needs to be some degree of
14 moisture but that can extend pretty far down and the connection between those
15 stream sub-straits and the ground water table in the are is really what
16 determines them.

17 CHAIRMAN HERRMANN: As a kid chasing crawfish in the creeks I can
18 appreciate they always went down were the water was.

19 MR. GALBRAITH: Doug would you be able to e-mail your presentation
20 to say Phil and we can get it distributed to the -- to the commissioners.

21 MR. NOVINGER: I would be happy to.

22 MR. SCHROEDER: We already have his presentation.

23 MR. GALBRAITH: It's in here.

24 MR. SCHROEDER: We have it on disc.

25 MR. GALBRAITH: Oh okay all right great we'll make copies for the

1 commission.

2 CHAIRMAN HERRMANN: Okay, we certainly appreciate it.

3 MR. NOVINGER: Sure, thank you.

4 CHAIRMAN HERRMANN: Thank you.

5 MR. HEUMAN: Hi, I'm Blane Heuman with the Nature
6 Conservancy. Ed is passing out a little bit of information just a fact sheet
7 about who the Nature Conservancy is, especially here in Missouri. I have a
8 fairly short presentation to talk about the subject the biota of some of these
9 unclassified streams. The Nature Conservancy is a private, non-profit
10 conservation organization that I work for that has a mission to protect the
11 plants, animals, natural communities of the earth by protecting the lands and
12 waters that they need to survive. That's the memorized piece. I'll try to
13 launch into here because I am already distracted by the chasing crawdads, I am a
14 geologist by training and making a presentation about biota so I can have a
15 little bit of fun with it. Doug is the real biological expert on these things.
16 I was thinking about some of these very small streams behind my grandparent's
17 house and as kids we would run down and grab crayfish and scare my sister with
18 them and it was all sorts of thoughts coming back. In Missouri we have -- we
19 have been referring to these headwater streams it's a stream classification
20 system that Missouri Department of Conservation has used descriptively for
21 years, the upper parts soft definitions. Two very incredibly important headwater
22 stream types in Missouri are associated with our prairie systems in Northern
23 Missouri and Western Missouri and also associated with our forested, sort of
24 Ozarkian spring fed systems. Trying to figure out sort of how do you answer the
25 questions what is the bio-diversity significance of some of these headwater

1 streams, I got to thinking well one of the things they could do intersect they
2 occurrences of rare and endangered species tracked by the Missouri Department of
3 Conservation in Missouri with that or something very similar to this classified
4 rivers network. And, what I approximately found is about 10% of Missouri T & E
5 aquatic species occurrences were falling outside of these -- these main larger
6 creeks and river systems. These species that were there included fish,
7 crayfish, muscles, invertebrates, a variety of stuff. My personal connections
8 to these Biota are as a fisherman and that's where I can't help but look at these
9 headwater systems and think that's where the bait lives, that's where we're gonna
10 have dragon flies, invertebrates, snails, Rainbow Darters, we're gonna have
11 things as Doug was pointing out that are going to find a special niche there.
12 The aquatic environment is brutal from a living creature. Fish eats fish, fish
13 eats everything if you're at the top and there are number of species that have
14 found a niche by going upward in this -- this river continuum and finding some
15 places and even they have to bury themselves down in the gravel for two or three
16 months of the summer and gasp for water every now and then it beats being eaten.
17 So, we have a number of species that are -- that we think of as special bait.
18 These are bait that are not necessarily the run of the mill minnow that you're
19 going to run into in the typical headwater stream or even creek in Missouri. We
20 have species like the Rainbow Darter that is only from Missouri nowhere else on
21 earth. This is an endangered species, well it's federally threatened.

22 COMMISSIONER PERRY: What's (inaudible) mean?

23 MR. HEUMAN: I believe it's got the lesser -- doesn't it Doug
24 the lesser status.

25 CHAIRMAN HERRMANN: Yeah.

1 MR. HEUMAN: On the federal listings of things, that's not the
2 Rainbow Darter I was thinking of the Niangua Darter and I've picture of a
3 Rainbow Darter which is a fairly common species up there. I apologize. Like I
4 say the biota stuff --

5 CHAIRMAN PERRY: Is the Niangua Darter only in the Niangua River?

6 MR. HEUMAN: Well, it was originally described from the Niangua
7 River and was subsequently found in six or eight other a --

8 CHAIRMAN HERRMANN: It's less census I saw by the Fish and Wildlife
9 Services in thirty-three counties.

10 MR. HEUMAN: The only place that it's really even half way
11 secure as a population is little Niangua that -- that basin and the water shed
12 seems to have the most. Another source of looking to the biological
13 significance the Nature Conservancy has systematically done eco-regional
14 assessments across the United States. We have looked from a global perspective
15 at broad ecological regions, this assessment the Nature Conservancy did was of
16 the Ozarks eco-region of Southern Missouri, Eastern Oklahoma, Northern Arkansas,
17 and some of the things that we can glean out of this there are thirty-three
18 globally significant species of fish, crayfish, snails, etc. that occur
19 principally in the small parts of the stream network. Some of these are endemic
20 to the Ozarks. Twenty-seven of those were Ozark endemic meaning there are in
21 this Ozarks eco-region nowhere else on earth. So as a bio-diversity conservation
22 non-profit we're very concerned about those species in particular. If they're
23 not conserved, if they're not protected in those habitats in the Ozarks they're
24 gone. A number of different crayfish, and invertebrates again without overusing
25 the bait analogy I won't go too far down that line. I'd thought about

1 discussing these ecological drainage units, but it's occurred to me from
2 listening to the discussions here today that you guys I think already get this.
3 You already understand that the hydro-geologic settings of the boot hill are
4 vastly different anywhere else in the state. That the Ozarks is a unique thing,
5 that Northern Missouri with these deep glacial soils provides a very different
6 environment. Biologists looking at the assemblages of types of fish, and other
7 biota are basically taking watersheds and lumping them into different ecological
8 drainage units. It turns out to be a really useful, a really effective way of
9 trying to discern the context from any discussion of aquatic biota in a
10 particular part of the state. I want to give just a couple quick examples. The
11 second example after this one I think we'll find were to draw the lines on
12 headwater streams because I've drawn a bunch of lines. So, you'll enjoy that.
13 I want to talk about North Missouri essential Tall Grass eco-region. Harrison
14 County, are Grand River Grasslands Project which extends into Ringgold
15 County, Iowa large glaciated soil, grass and landscape, one of the largest
16 unplowed remnant prairie locations in all of the Central Tall Grass, which
17 includes parts of Iowa Missouri, Illinois, Indiana, and a little bit of Nebraska
18 and what we find in these high quality remnants like. I've done ranch preserve
19 is that prairies have a rich, diverse, flora of vegetation that extends down
20 into the draws, that extends down in to these headwater streams themselves.
21 And, Doug was talking about all the munchers and grazers you can see a picture
22 of one of the headwater streams on Dunn Ranch, which conservation department has
23 targeted for Topeka Shiner introduction. You'll see all the vegetation that
24 just leans over in it. Anything that can reach up and grab that and -- and get
25 food from that vegetation is -- is going to do that. I have a -- as a land

1 manager for the Nature Conservancy in Missouri, I run into a number of different
2 problems related to the conversion of these kinds of natural systems and North
3 Missouri provides a special challenge that some of you will appreciate in that
4 when you take one of these prairie systems and you convert that vegetation from
5 the native prairie to an exotic cool season grass you change the water flow
6 characteristics, fescue fields can shed water almost like concrete in certain
7 times of year. That increased rate of run-off is going to increase the amount
8 of creation of channels. So you can actually get down cutting in the main creek
9 systems, which is a big problem in North Missouri. You can also get new
10 channels that were otherwise continuous prairie vegetation but with -- with
11 these alterations now you've got a -- intricate channel system that cuts
12 up into people's pastures and fields. That quite possibly didn't exist prior to
13 the conversion and fifty or more years of rapid run-off in these landscapes.
14 What the Nature Conservancy is focused on is on these high quality remnants and
15 what we need to do in these headwater streams to try to reverse some of those
16 trends, try to fix some things.

17 COMMISSIONER PERRY: I don't understand how that happened. If I
18 understand conversion (inaudible).

19 MR. HEUMAN: Right. Think about a gully washer rain that
20 happens on this native prairie there's a lot of infiltration the roots are --
21 the space between the roots and water goes down into the soil more, so there's
22 less percentage of run-off in a native prairie. With a fescue these -- these
23 fine fibrous roots it creates a shallow continuous root mass that tends to shed
24 water off that additional amount of water flowing off will have more energy
25 because there's more water -- more of it moving through and that will just

1 simply take more soil with it and it cuts channels.

2 COMMISSIONER HARDECKE: Yeah, but the fescue has more of an ability to hold
3 water than does the one season grass the soil is protected by that root system.

4 MR. HEUMAN: In a native prairie vegetation system there's
5 going to --

6 COMMISSIONER HARDECKE: There's a lot of better dirt there.

7 MR. HEUMAN: Yes.

8 COMMISSIONER HARDECKE: Subject to erosion.

9 Mr. HEUMAN: Well, not in some of the very best prairie
10 remnants. What we find is that in -- in some of the best data comes from the
11 Chicago area the Morton Arboretum in Chicago.

12 COMMISSIONER PERRY:(Inaudible).

13 MR. HEUMAN: I'm sorry.

14 COMMISSIONER PERRY:(Inaudible) didn't they? They have better conditions
15 for (inaudible). I was wondering why they (inaudible) fescue because you have
16 better ground coverage, right?

17 COMMISSIONER HARDECKE: Right, you have a lot less soil erosion and fescue
18 in Missouri than you would with other kind of grasses.

19 MR. HEUMAN: You do but diverse native prairie mix which is
20 kind of oddity, I mean is what used to be a hundred years ago from measurements
21 made on some of the remnants across Missouri and Northern Illinois seemed to
22 show even better soil erosion and run-off characteristics than any of the
23 pasture racemes.

24 COMMISSIONER HARDECKE: You can go out on a field of fescue and see up to six
25 or eight inches of standing water after a rain but that run-off is being held

1 for infiltration, so that isn't necessarily always true. It depends on the
2 management.

3 MR. HEUMAN: Well, that's true too. Yeah, it's -- it's a unique
4 system that once we start tinkering with it and we get down cut channels and
5 water doing different things it's kind of hard to tease it all back apart.
6 Here's another example of some high quality headwaters from Southern Missouri in
7 the Ozarks eco-region along the Current River. Nature Conservancy's largest
8 land holding in Missouri is our fifty-six hundred acre Chilton Creek Preserve
9 about five miles North of Van Buren. Sort of an aerial view so you'll have an
10 idea. You'll see the Current River snaking through the upper part of
11 (inaudible) and this little gravel stretch visible in the left hand side is
12 Chilton Creek. We started looking at the stream system here not necessarily
13 from a classification system we wanted to answer a simple question where are the
14 biota, where are the aquatic biota we have a twenty-five hundred acre basin
15 completely in our ownership and natural areas style management. What is the
16 characteristic of this -- of this basin? This is kind of a topographic relief
17 thing the darker brown are the high areas with the green with the river channels
18 so we started looking at it and we took this same kind of topographic hill shade
19 and it was a little hard to see but you can see the stream lines from a USGS
20 topographic map sort of overlaid with that. And, one of the things we quickly
21 discovered is that in these little sides channels, a little side hollows it was
22 very inconsistent when they would draw a stream line and when they wouldn't on
23 the topographic map and for sort of a broader sort of scientific look at his
24 basin we found that those stream lines weren't very helpful so we needed to do
25 something else we turned to some help from our university partners and

1 discovered that we can create sort of a computer model of where water should be
2 flowing based on the topography and that's the lines that you see through here.
3 There's a hundred and fourteen stream segments in this twenty-four hundred acre
4 basin. Model that from a digital elevation model on the computer generated all
5 these different classes now immediately we see all these little side pieces and
6 we think now off the top my head I know that many of these are going to be
7 ephemeral. The first thing we did is check the model and go out and see if it
8 went far enough up the hill or if it went too far up the hill where does the
9 actual channel that water regularly flows through. How far up the hill does it
10 extend and toyed with the numbers until we came up with the particular model.
11 Then we went out and we looked at it. What are the flow patterns and the blue
12 on this map is where there is permanent water. Anywhere there's red in the main
13 stems that's between blue segments we've got intermittent, flow sporadically and
14 then all of the little sides that are red essentially only have storm flow
15 through them they use ephemeral things. We started looking at this and we
16 discovered that just a stream order or area drainage kind of a model you know
17 doing it in the lab, doing it in the office would not have given us this map.
18 We see blue segments scattered in some places way up in the drainage and way up
19 into a side hollow. This is the karst business we have bedrock that's weeping
20 water out. Small springs a number a different complexities to the flow pattern,
21 but we did find it somewhat instructive just to see what it looks like. Then we
22 had biologist that went out and started making collections. Started collecting
23 fish, invertebrates, and we basically found what you might -- what Doug would
24 probably expect that there was really only fish in the lower end. There was
25 thirty-six stream segments that had fish and most of these are as I would say

1 "bait", you know minnows. Actually, there was one small-mouth bass that added
2 to the diversity in the pool in the bottom end but he didn't last. He was
3 fished out. There were forty other stream segments out of this hundred fourteen
4 in all that had invertebrates but no fish. So, basically that tells us that
5 about 2/3 of this sort of computerized stream network was found to have aquatic
6 biota. Very interesting set of numbers, interesting distributions to some of
7 the species, some of the species that were found are found here and no where
8 else, not this basin but in the Current River basin you know these white river
9 drainages of Southeast Missouri. But, never the less it fits some -- some
10 predictable patterns of larger waters in the bottom with fish in them.
11 Intermittent streams, small spring fed reaches that can sometimes reach fairly
12 high up into the water shed, and then all of the ephemeral reaches scattered all
13 through that is the drainage for the whole bit.

14 COMMISSIONER HARDECKE: Is this all forested?

15 MR. HEUMAN: Mostly, yes. There are some native glade
16 grasslands, shallow bedrock with grass. And that's basically a presentation of
17 a couple of examples of high quality sort of headwater streams that the Nature
18 Conservancy is involved with in Missouri. These headwater streams have a rich
19 history and especially in the Ozarks and also in some portions of our prairie
20 areas some pretty significant biota. I will be happy to entertain any
21 questions.

22 CHAIRMAN HERRMANN: On your map were you identified intermittent,
23 ephemeral, and -- one forward I believe.

24 MR. HEUMAN: Before this one.

25 CHAIRMAN HERRMANN: No, no forward. Oh, I'm sorry back to that.

1 Yeah.

2 MR. HEUMAN: Oh, there.

3 CHAIRMAN HERRMANN: Yeah. Coming down the flow is from upper left to
4 lower right.

5 MR. HEUMAN: Correct.

6 CHAIRMAN HERRMANN: Obviously, and you have blue permanent water and
7 then down below that you have intermittent.

8 MR. HEUMAN: Yes.

9 CHAIRMAN HERRMANN: How can you have a permanent flow going to
10 intermittent flow unless you have lost at a sub-surface.

11 MR. HEUMAN: We have periodically.

12 CHAIRMAN HERRMANN: In that case you do.

13 MR. HEUMAN: Yes, and in fact right at that point were the --
14 at the bottom end were the blue turns to intermittent is where it hits the
15 alluvium of the Current River Valley.

16 CHAIRMAN HERRMANN: Okay.

17 MR. HEUMAN: And, it still has a channel at the surface, which
18 basically takes the floodwater during big storm events.

19 CHAIRMAN HERRMANN: Okay. That condition doesn't exist in Red Oak
20 Creek. (laughter).

21 MR. GALBRAITH: I don't know if we've study it to this extent.

22 CHAIRMAN HERRMANN: I have. Okay, thank you very much Blane I
23 appreciate it. Okay, is Joe Maxwell still here?

24 MR. GALBRAITH: I believe he said he was going to leave around three
25 or three-thirty. I don't see him you better call a --

1 CHAIRMAN HERRMANN: Next item which was by agreement deferred was Mark
2 Twain Lake in Northeast Missouri is there anyone here that wants to address that
3 subject. There were some people this morning, but they've left. Okay, fine.
4 Public Comment and correspondence, and public comment correspondence or note
5 worthy events? Hearing none, future meetings have been taken care of I believe.
6 Tentatively, Kansas City on September 6th and perhaps Branson November 1st
7 pending Malinda checking on the Veterans.

(End of Tape 4 Side A)

8 I will declare this meeting adjourned.

9 CERTIFICATE OF REPORTER

10
11 I, DANIELLE Y. MOSER, within and for the State of Missouri, do hereby
12 certify that the tape transcription in the foregoing tape was transcribed
13 to the best of my ability and therefore reduced to typewriting under my
14 direction; that I am neither counsel for, related to, nor employed by any
15 of the parties to the action in which this tape was taken, and further,
16 that I am not a relative or employee of any
17 attorney or counsel employed by the parties thereto, nor financially or
18 otherwise
19 interested in the outcome of the action.
20
21
22
23

24 _____
DANIELLE Y. MOSER
25

Respectfully Submitted,

Edward Galbraith
Director of Staff